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ISSUES IN RELIGIOUS LIBERTY

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BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

OVERSIGHT ON THE STATE OF RELIGIOUS LIBERTY IN AMERICA TODAY

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CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

Page

Hatch, Hon. Orrin G., chairman, Subcommittee on the Constitution 1
Leahy, Hon. Patrick J 4

CHRONOLOGICAL LIST OF WITNESSES

Tribe, Prof. Laurence H., Harvard Law School, Cambridge, MA; and William B. Ball, attorney, Harrisburg, PA 7
Sileven, Paster Everett, Faith Baptist Church, Louisville, NE; and Dr. Greg Dixon, National Chairman of Unregistered Churches, Indianapolis, IN 27
Bergstrom, Rev. Charles V., executive director, office of governmental affairs, Lutheran Council in the United States of America, Washington, DC 120
Moon, Rev. Sun Myung, Unification Church, as given through the translator, Col. Bo Hi Pak 150
Panel consisting of: D. James Kennedy, senior minister, Coral Ridge Presbyterian Church, Fort Lauderdale, FL; president, Coalition For Religious Liberty and president, Evangelism Explosion International; Herbert W. Titus, dean and professor, School of Public Policy, vice president for academic affairs, CBN University, Virginia Beach, VA; Edward V. Hill, pastor, Mount Zion Missionary Baptist Church, Los Angeles, CA; and John Buchanan, Jr., chairman of the board, People For The American Way, Washington, DC 193
Weaver, Rev. Paul, Trinity Baptist Church, Route 2-A, Williston, VT 234

ALPHABETICAL LIST AND MATERIALS SUBMITTED

Ball, William B.:
  Testimony 15
  Responses of Mr. Ball to questions of Senator Hatch 18
Bergstrom, Rev. Charles V.:
  Testimony 120
  Prepared statement 124
  The Nature of the Church and Its Relationship With Government, a statement by the Lutheran Council of the U.S.A 130
  Statement to the House Committee on Government Operations, dated March 4, 1983 141
  Statement to the House Committee on the Judiciary, dated March 9, 1983 143
  Statement to the Senate Committee on the Judiciary, dated May 23, 1984 144
Buchanan, John:
  Testimony 213
  Prepared statement 215
Dixon, Dr. Greg:
  Testimony 27
  Letter to Senator Hatch, dated June 29, 1984, re the position of the unregistered churches 30
Hill, Dr. Edward V.: Testimony 211
Kennedy, Dr. D. James:
  Testimony 193
  Prepared statement 197
Moon, Rev. Sun Myung:
  Testimony 150

Page

- Moon, Rev. Sun Myung—Continued
  - Prepared statement ... 155
- Sileven, Paster Everett:
  - Testimony ... 32
  - Prepared statement ... 36
    - Appendix A—Nebraska Law Review, Freedom of Religion ... 47
    - Appendix B—The Report of the Governor's Christian School Issue Panel ... 57
    - Appendix C—Nebraska Civil Liberties Union ... 84
    - Appendix D—United States Civil Rights Commission Report, dated February 29, 1984 ... 85
    - Appendix E—Enabling Act of Congress, 1864 ... 97
    - Appendix F—Letter to Richard Moore, from Cicil R. Reynolds, dated September 4, 1982, re the California Achievement Test ... 102
    - Appendix G—Articles in addition to, and amendment of, the Constitution of the United States of America, proposed by Congress, and ratified by the legislatures of the several States pursuant to the fifth article of the original Constitution ... 104
    - Appendix H—Nebraska Bill of Rights, 1875 ... 105
    - Appendix I—Chapter 79-1701 and 79-1703, Private Denominational and Parochial Schools ... 106
    - Appendix J—Judge Ronald Reagan's Order, April 1984 ... 108
    - Appendix K—Judge Case's Order, April 29, 1979 ... 116
- Titus, Dr. Herbert W.:
  - Testimony ... 199
  - Prepared statement ... 202
- Tribe, Prof. Laurence H.:
  - Testimony ... 7
  - Prepared statement ... 11

APPENDIX

ADDITIONAL SUBMISSIONS FOR THE RECORD

- Supplemental comments on behalf of the Unification Church of America, August 15, 1984 ... 238
- Second supplemental comments on behalf of the Unification Church of America, December 10, 1984 ... 323
- Letter to Senator Hatch from Edward F. Canfield, dated December 28, 1984, enclosed a memorandum intended as a background and summary of the previously submitted supplemental statements ... 419
- List of exhibits:
  - A—Court Interpreters Act, Public Law 95-539, 95th Congress, October 28, 1978 ... 428
  - B—Congressional Record, House, October 10, 1978; Legislative History of Court Interpreters Act ... 434
  - C—Affidavit of Robert E. Heggestad, re to conversation with Jack Leeth, Administrative Office of U.S. Courts ... 464
  - D—Affidavit of Robert E. Heggestad, re to conversation with Manabu Fukuda, Interpreting Branch of the Language Services Division of the U.S. Department of State ... 468
  - E—Affidavit of Robert E. Heggestad, re to conversation with Dina Kohn, Director of the U.S. District Court Interpreters Office in New York ... 472
  - F—Letter dated October 9, 1984 to Takeru Kamiyama from William R. Ratchford, Member of Congress, 5th District, Connecticut ... 476
  - G—Letter dated October 3, 1984 to William R. Ratchford from William E. Foley, Director, Administrative Office of the U.S. Courts ... 477
  - H—Letter dated September 28, 1984 to Takeru Kamiyama from Ron Paul, Member of Congress ... 480
  - I—Affidavit of Takeru Kamiyama ... 481
  - J—Michiko Kosaka, translator's notes and translations ... 483
  - K—Kinko Sato's brief personal history ... 526
  - L—Interview of Mr. Eisuke Sasagawa on his retranslation of the grand jury hearing of Mr. Takeru Kamiyama by Attorney Kinko Sato, August 25, 1984 ... 527
  - M—Report of Kinko Sato entitled "On the Grand Jury Investigation of Mr. Kamiyama's Conduct in Connection With Suspected Violation of Tax Laws" dated July 18, 1984 ... 564

Page

List of exhibits—Continued
  Supplemental exhibit 1—Declaration of John Hinds 627
  Supplemental exhibit 2—Declaration of Tomoko Torii 715
  Supplemental exhibit 3—Declaration of Kenji Onuki 716
  Supplemental exhibit 4—Declaration of Yukiko Matsumura 717
  Supplemental exhibit 5—Affidavit of Robert E. Heggestad 744

ADDITIONAL STATEMENTS

Richard Graveley, national director of public affairs International Society for Krishna Consciousness 745
Dr. Bob Jones, Jr., chancellor, Bob Jones University 760
Rev. John D. Stanard III, director, Church of Scientology 770
The Church of Scientology Creed 776

LETTERS AND ENCLOSURES

Letter to Senator Hatch from G.M. Ross, Ph.D., associate director and congressional liaison, Seventh-Day Adventists, enclosures from the May/June edition of Liberty magazine 782
  "Uncle Sam Church Inspector," by Dean M. Kelley 783
  "Home Spun Schools," by Eric E. Wiggin 786
  "Should Christian Schools Have State-Certified Teachers?" Yes, by James M. Vukelic; No, by Samuel E. Ericsson 789
  "The Oppressor," by Pat Becarma 793
  "Diplomatic Relations With The Vatican: A Can of Worms," by Roland R. Hegstad 796
Letter to Senator Hatch from Juanita L. Clay, Ph.D., dated July 22, 1984, re to a newspaper article 800
  "In Defense of Religious Liberty," by Dr. Milton A. Reid, April 27, 1984 801
Letter to Senator Hatch from Juanita L. Clay, Ph.D., submitting statement 802
  Prepared statement of Robert L. Grete, director, Rocky Bayou Christian School, Niceville, FL 803
    Letters from Mr. Grete to:
      Christian Law Association 815
      Jerome Kurtz, Commissioner of Internal Revenue, October 2, 1978 818
      Jerome Kurtz, Commissioner of Internal Revenue, April 11, 1979. 820
      Senator Robert Dole 822
Memorandum to Dr. Paul A. Kienel executive director, ACSI, from William B. Ball, dated September 13, 1983, re Social Security Tax on Churches 824
"The New Social Security Law," article in the Focus on Freedom by the Christian Education and Research Foundation 825
Biblical principles 826
Constitutional principles 830
"The Uneasy Case Against Reverend Moon," by John McClaughry, December 23, 1983, National Review 833

ISSUES IN RELIGIOUS LIBERTY

TUESDAY, JUNE 26, 1984

U.S. Senate,
Subcommittee on the Constitution,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to notice, in room SD-106, Dirksen Building, commencing at 9:08 a.m., the Honorable Orrin G. Hatch (chairman of the subcommittee) presiding.

Present: Senators Leahy and DeConcini.

Staff present: Dee V. Benson, special counsel; Randall P. Rader, general counsel; Carol Epps, chief clerk; Leslie Leap and Deborah Dahl, clerks (Subcommittee on the Constitution); and Dick Bowman, counsel (Committee on the Judiciary).

OPEN STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH, CHAIRMAN, SUBCOMMITTEE ON THE CONSTITUTION

Senator Hatch. Ladies and gentlemen, this hearing will now come to order. We are here in the capacity of the Senate Judiciary Committee's Subcommittee on the Constitution, which I chair, to conduct an oversight hearing on the state of religious liberty in America today.

This is a subject of monumental significance to our Republic. The right of every man to be free from governmental coercion or interference in his personal relationship with his Creator is fundamental to our free and democratic way of life. Its value cannot be overstated.

As historian Sanford Cobb has so accurately observed:

> Among all the benefits to mankind to which this soil has given rise, this pure religious liberty may be justly rated as the great gift of America to civilization and the world * * *

The concept of religious freedom has been central in the political philosophy of the leaders of our Nation since the Pilgrims first landed at Plymouth Rock in 1620. It was significant in the 18th century debates of State legislatures and the Continental Congress, where it had the indefatigable support of men such as Thomas Jefferson, George Mason and, of course, James Madison.

These debates culminated in 1789 in the passage by the First Congress of the first amendment in the Bill of Rights. That amendment contains these few but well chosen words:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof * * *

These words, clear as they may seem, have been the subject of significant, and sometimes heated, debate since their enactment almost two centuries ago. These debates have often led to lawsuits and from time to time the U.S. Supreme Court has stepped in to give guidance and interpret those simple words. In 1947 the Court told us in *Everson* v. *Board of Education* that the establishment of religion clause means at least that:

> Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.

With respect to the free exercise clause, the Supreme Court stated in *Wisconsin* v. *Yoder* that:

> Only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion.

In other decisions, the Court held in 1962 that a prayer composed by New York State school officials for voluntary recital in the public schools constituted an unconstitutional establishment of religion; in 1961 that Maryland's Sunday closing laws did not constitute such an establishment of religion, in 1981 that a State university in Missouri could not, without violating the establishment clause, allow equal access to a student religious group to school facilities used by other groups, and finally, in this year, 1984, and I am only hitting a smattering of the cases, that a Christian nativity scene paid for out of public funds and sponsored by a municipality does not represent an unconstitutional establishment violation.

With respect to the free exercise clause, the Court has told us that the State of Wisconsin cannot require children of the Amish faith to abide by a State law requiring attendance in a formal high school until age 16.

Where these judicial interpretations have left us in law and practice in 1984 is subject to legitimate differences of opinion. Much has been and is being written on the subject of religious liberty in America. On the one hand, there are those who suggest that for all our efforts the first amendment, in both its establishment and free exercise clauses, has been misinterpreted and misapplied. On the other hand, there are people who feel that the religious freedoms contemplated by the Founding Fathers are, for the most part, being fully protected.

Perhaps it is best for us to look upon this extended dialogue over the precise meaning of the first amendment as evidence of a healthy and enduring Constitution. This subcommittee hopes it means at least that. But this subcommittee is also aware that in the minds of some, the present climate for religious liberty in America is not all it should be.

By any standard of measurement, there has been an alarming acceleration of disputes between American citizens and Government officials over the proper role of the Government in the affairs of churches. Just to mention a few of these disputes, we have recently seen a minister and others sent to jail in Nebraska for refusing to obey a court order which they feel, rightly or wrongly, is against their religious beliefs; we have seen a private religious university lose its tax exempt status, rightly or wrongly, because of the school's racially discriminatory admission standards; and we have seen a private religious university lose its tax exempt status, rightly or wrongly, because of the school's racially discriminatory admission standards; and we have seen a foreign national, who came to our country to spread the word of God in the form of the Unification Church, investigated by the Internal Revenue Service and accused and convicted of criminal tax evasion stemming from allegations that he was in possession of money and property which he contended was not his own but rather the property of his church.

We have also seen disputes over whether municipalities may, constitutionally, sponsor nativity scenes at Christmas, whether Orthodox Jews may wear unobtrusive religious headgear in military service; and, of course, we have recently had extensive debate on the Senate floor over school prayer and whether religious institutions are entitled to use public buildings in a manner equal to other community groups.

These issues and others will be discussed at today's hearing. Hopefully, we will leave here with a better awareness of the relative well-being of our fundamental religious rights and will reach some helpful conclusions. A debate that is still going on and presently exists as an amendment to the math and science bill. The jailings of ministers are especially disturbing to me. Here we are putting men of cloth, as it were, behind bars right here in the 20th century. It is more than disturbing to me. It is alarming. This is not the Soviet Union, this is not Poland, this is not Afghanistan, this is the United States of America. [Applause.]

Please, I would like really not to have any show of emotion during this hearing. That does not mean I do not want you to act the way you feel but I just believe that the purpose of this hearing is to explore these matters and find out. As I was saying I am concerned because this is the greatest country in the world, it is the greatest country providing the greatest measure of religious freedom in the world today and I am concerned about putting ministers in jail because of their religious beliefs and tenets or if they are not religious beliefs and tenets, because of courts that will not allow religion to be considered as part of its instructions to the jury.

Now, something has got to be wrong. To be sure, we have come a long way since the early days of this country when priests were jailed, ministers were shot, and witches were burned at the stake. But some are worrying that perhaps we may be slipping back. I happen to belong to the only church in the history of this country that had an extermination order put out against its members by a State Governor. That happened over a century ago and I for one would like to think that it will never happen again, not in this country. but what are people to think? When a Baptist minister of a church-run school in Nebraska, which by a number of objective measurements may be doing a better job of educating children than the public schools, is sentenced to jail for refusing to compromise his religious beliefs to satisfy what appear to be unnecessary State reporting regulations. And what are we to think when a leader of an unpopular church who is generally hated and despised by large groups of people may be thrown in prison after a court refuses to recognize what some believe to be his and his church's constitutional rights in a criminal trial in our very own Federal courts? Have we just become more skilled in hiding religious persecution behind the veil of an investigation by even that most irreligious of institutions, the Internal Revenue Service? I hope not.

But it is surely time we started finding out, and that is why we are here today. These are not easy questions, these are not easy matters, they are tough. And this has been a very difficult hearing to set up and I have been very concerned about it.

In arranging for this oversight hearing, the subcommittee has made every effort to include a wide variety of viewpoints from a representative sampling of all religious groups active in today's America. We may need to hold followup hearings to get an even wider variety of viewpoints.

As a result, we will be hearing today from Presbyterians, Fundamentalists, Baptists, Unificationists, and Lutherans, among others. And we have received written statements from many other religions, such as the Seventh Day Adventists, the Hare Krishnas and the Scientologists, which will be made a part of the written record of these proceedings. And we will be happy to receive responses from other religious institutions throughout America as well.

Now, all of today's witnesses have been requested to provide the subcommittee with their observations on the current state of religious liberty and to recommend legislation if they so choose which to them may appear necessary and appropriate to correct any deficiencies in practice or current law.

Our purpose here today is not to retry or unnecessarily reargue the facts of any previous lawsuits. We are interested in past church/state litigation only to the extent it helps us understand the current state of affairs.

We feel we have an outstanding group of witnesses to help us in the task at hand. Of course, central to that task is a constitutional inquiry. We are not here to necessarily adjudge what is fair or necessary or desirable but rather what is constitutional.

To assist us in that regard we have invited two prominent lawyers and constitutional scholars, Prof. Laurence Tribe, who has testified before this committee many times, of the Harvard Law School; and Mr. William Bell, a noted constitutional lawyer on the issue of religious freedom, who also has testified before this committee, from Harrisburg, PA.

Before we invite these witnesses to the stand, I would be happy to turn to my dear friend and colleague from Vermont, Senator Leahy.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator **Leahy**. Thank you, Mr. Chairman.

I do have a short statement I would like to make.

I am glad you are having these hearings; like all of us, we find, and I am sure the chairman is in the same situation where you have five or six or seven different hearings scheduled at the same time, and that is the situation I find myself in. So at some point I will have to leave to go to another hearing. But I do commend you, Mr. Chairman, for choosing to devote a hearing of this subcommittee to the important subject of religious freedom.

As one who belongs himself to a minority religion, I do not think that the importance of such a hearing can be overstated. You certainly do the subcommittee and you certainly do the whole Senate a service in holding this hearing.

Freedom to worship God in each person's own way is a right we should never regard as permanently secure, for too many times in mankind's history guarantees to that effect have proven overstated; especially when those making the guarantees consider themselves to have the one true faith and those needing the guarantees are those who are considered to be in the majority. And that is something that we should never forget in this country.

But nevertheless, I think history will show the current era as a time when religious expression was bursting with energy. This is a time when the inherent strains in the first amendment between the free exercise clause and the establishment clause—the tug of war between the will to worship without restraints of any kind and the fear that favoring religion will result in State sponsorship of religion—have risen to the surface really more than at any other time in our 200-year history. Yet this is also a time when the good sense of people have kept these strains from dividing our society along religious lines.

I remind everybody in this room that such divisions of faith have weakened and destroyed so many nations, so many nations throughout history.

The Senate recently defeated Senate Joint Resolution 73, which would have overturned the Supreme Court's school prayer cases and allowed vocal State-sponsored prayers in public schools. Some people regard this vote as a victory because it reaffirmed establishment clause values. I looked at it somewhat differently. I looked on the vote as a victory because it kept Government from interfering with the religious freedom of millions of American schoolchildren. A number of witnesses here today will talk about the problem of bureaucrats interfering with rights of individual conscience.

The very thought of Government committees making up prayers for my children to offer to God is offensive to me. Our vote in the Senate on this important religious freedom issue is a sure sign to me that the first amendment is not a dead letter in America, but a living signpost pointing the way to the potential for enriching the spirit without impoverishing the principles that nurture that spirit.

In addition to the school prayer debate, there are other conflicts regarding religious liberty which should be aired by Congress—conflicts over the taxation of religious entities, conflicts over equal access to religious and nonreligious student groups during noninstructional time in the public schools, conflicts over the content of textbooks, conflicts over the payment for books in parochial schools, conflicts over released time and conflicts over official sponsorship of public religious displays.

The fact that there have been conflicts is far, far less important than the fact that most of the conflicts can be resolved or greatly reduced through the judicial and political processes that are guaranteed by the Constitution and that are working as well today as they were nearly 200 years ago when the Constitution was born.

Certainly in my own State of Vermont, tiny little Vermont, northeastern part of the United States and within the State an area that we call the northeast kingdom of Vermont, we have seen just in the past few days when these issues have come up, but the issues will be resolved again through the normal judicial and political processes under the umbrella of both our Federal and State Constitutions.

I am convinced that trying as the situation is in Vermont today, that those issues will be resolved.

The legislative branch of Government has a strong and legitimate interest in the health of religious freedom and the effectiveness of the institutions that guarantee its continuance. If there are lapses in needed protections, those lapses must be exposed. And if we need new legislation, we should write and consider those bills now, and again, one of the reasons why the importance of this hearing.

In addressing any harm that may come from the actions of State or Federal bureaucrats, who are no more or less perfect than any other public servants, we should not create additional dangers to religion. For example, I see a danger in the diminishing of religion which could come from prayers in school that are so bland and homogenized that they offer little spiritual nourishment to anyone. I see a danger in the use of religion to bolster single-issue politics, whether to the right or the left, and to polarize, rather than unite.

I see a danger in cloaking secular legislative decisions in God's word and will to justify one policy position over another.

I welcome the witnesses who have taken the trouble to come to Washington to address these and other concerns. The diversity of opinions that are likely to be expressed here today is a sure sign that religion is a vital American concern, full of life. And above all, free.

If I just think back through history of the number of countries where there could be no public hearings of this nature, with such a diversity of views and beliefs, each one of which will be considered.

Again, what I said earlier in my statement, that we must make sure that these guarantees are never proven overstated, these guarantees of religion, especially when those making the guarantees consider themselves to have the one true faith. That is the sign throughout history if those seeking the guarantees were considered to be in the minority, that the majority was starting to question the values of the guarantees.

One of the things that has kept this country so strong for 200 years is that the majority has never questioned the value of those guarantees. They have never diminished the value of those guarantees to the minority of religious belief in this country.

So we in the Senate and the American people are going to be the beneficiaries of the interest and zeal of those who are testifying here today. I know I speak for Senator Hatch when I say you have the thanks of both of us and I reiterate again, Mr. Chairman, I thank you for holding this hearing.

Senator **Hatch**. Well, thank you, Senator Leahy. I appreciate your kind remarks.

We will begin this morning by inviting Mr. Laurence Tribe from the Harvard Law School and Mr. Willian Ball, a constitutional expert and trial lawyer from Harrisburg, PA to come to the witness table to present some brief preliminary remarks on the constitutional underpinnings of religious freedom which will serve as a standard for the subcommittee to refer to as we proceed to hear from our other distinguished guests.

I do not know of two people in this country who could speak more eloquently or more accurately on religious freedom issues than these two kind gentleman, and I have deep respect for both of them. And we are delighted to have both of you with us today.

After we have had a certain number of these people testify, I would like to be able to call you back again to give us some of your comments concerning what you have heard this morning.

STATEMENTS OF PROF. LAURENCE H. TRIBE, HARVARD LAW SCHOOL, CAMBRIDGE, MA; AND WILLIAM B. BALL, ATTORNEY, HARRISBURG, PA

Mr. Tribe. Thank you very much, Senator Hatch, Senator Leahy, members of the subcommittee. I am honored by this subcommittee's invitation that I appear to express my views here this morning on the Federal constitutional underpinnings of religious liberty in America and on what I quite frankly perceive to be an escalating disregard by Government both for religious freedom and for the separation of church and state without which such freedom, and the open society that such freedom sustains, cannot long endure.

I will speak quite briefly and hope that I can be of some help to the committee in answering questions after it has heard further testimony.

I think I should inform the committee at the outset that my concern with these issues of separation of church and state has led me to serve as counsel in recent years in a number of major church-state controversies in the State and Federal courts and in the Supreme Court of the United States as well as in the Supreme Courts of other nations—sometimes representing churches and church leaders, sometimes opposing them, depending entirely upon where I saw the path of constitutional justice leading me.

To note just a few prominent recent examples, and to illustrate the breadth of the problems that make this an important hearing, I have represented or counseled the Worldwide Church of God, in challenging the authority of a State's attorney general to place a bona fide church under total Government receivership; Jewish groups, in challenging Government's command that they sacrifice their Sabbath or their religious interests in order to take part in athletic contests to represent this Nation in international competition; Buddhists, in challenging the power of Japanese courts, operating under a consistitution and a consitutional provision modeled on the first amendment, to determine which is the true icon of the faith; the Reverend Sun Myung Moon, in challenging the authority of the Internal Revenue Service and the Department of Justice and Federal courts and juries blatantly to substitute their own views for those of the Unification faith on the allocation of power and property within that religion. I have also represented the Unification Church of America, in challenging the authority of a State tax commission to determine eligibility for real property tax exemption on the basis of that Commission's own views as to the content of church doctrine and theology; the Hare Krishnas, in their challenge to certain limits on public solicitation for religious purposes; Christian children and parents, in challenging prohibitions on purely voluntary, after-school, student-initiated prayers on public high school premises open to other groups. I have represented a Massachusetts restaurant in challenging the authority of the State to delegate to the governing body of churches the unilateral power to veto the award of nearby business licenses. And I have represented the State of Oregon in challenging the authority of the Rajnish church to incorporate land owned by it as an official municipality of the State of Oregon.

Now, that variety is merely illustrative, and just as I have taken on these causes out of personal conviction as to what a just and fair reading of the Constitution requires, so I appear before the subcommittee today to speak my convictions as a student of the constititutional law of church-state relations.

I appear not as advocate or as counsel for any individual, any institution, or any group. I am certainly not a spokesman for Harvard University, where I hold the only chair in constitutional law, and whose recent insistence on holding its graduation exercises on a Jewish holiday seemed to me sadly insensitive.

I appear, then, solely to express my own views and my own conclusions and to help guide this subcommittee as well as I am able through the legal thickest of church and state.

Now, generalizations about such large matters are obviously treacherous, but I believe that the ultimate aims of the first amendment's religion clauses are first, to facilitate spiritual volition by showing no Government favoritism toward or animosity against any religious group or view, allowing each to flourish according to the zeal of its adherents and the appeal of its dogma; second, to assure that spiritual institutional never be armed with governmental powers either of the sword or of the purse, and that Government not be wrapped in the mantle of infallibility that comes from identifiction with the divine—a mantle donned by the Ayatollahs of the world but rejected by our mantle that makes it possible for Government to denounce its critics as enemies of the Almighty; and, third, to guarantee such governmental accommodation to religion as may be reconciled with these basic objectives, so that religion is never relegated to a mere irrelevance, and so that, when religion bears on a matter of concern to Government, it is taken fully and meaningfully into account.

The Supreme Court in the recent of case *Laskin* v. *Grendel's Den* summarized the purposes of the first amendment's garantees as twofold: to foreclose State interference with the practice of religious faiths and at the same time to foreclose the establishment of a State religion familiar in other 18th century regimes. Unlike some observers I do not see those two clauses as in fundamental tension with one another. Of course, they will occasionally come into conflict. But they reinforce a common vision of the role of government in the affairs of humankind.

Thus, when the Court recently struck down a law giving churches governmental power—the power to decide who, within a nearly area, could serve liquor—the Court recalled that, at the time of the

Revolution, Americans feared not only a denial of religious freedom but the danger of political oppression through a union of civil and ecclesiastical control. In sum, meaningful spiritual freedom requires that Government keep its distance and not allow the intermingling of religious and civil institutions.

Whenever civil authority seeks at one and the same time to don the sanctifying cloak of religious ceremony and to wield the supreme authority to tailor religious destiny, then both the denial of religious freedom and the danger of political oppression are gravely realized. And I fear, Mr. Chairman, that that denial and that danger confront us increasingly in this Nation today.

In disputes over matters as diverse as the teaching of children and the taxation of income, government institutions at all levels are indeed forgetting how vigilant we must be to protect religious freedom. They are arrogating to themselves the power to define new boundaries between the secular and the sacred, to swallow the life of the spirit within the bowels of the bureaucracy, and to surround the secular halls of the State with the sacred garb of the church. I believe that it is not truly faithful to the vision of the Framers for courts to hold—as the Supreme Court did in the case of *Marsh* v. *Chambers* that legislatures may initiate their proceedings with official prayers pronounced by publicly funded chaplains but that high school children may not initiate voluntary student-initiated prayers on public premises even after school hours, as a number of lower courts have erroneously ruled.

I do not think it is consonant with what the Framers envisioned for the most sacred symbols of Christianity—surrounded by plastic reindeer, to be placed at public expense in a city's central square as the Supreme Court allowed in the Pawtucket creche case, *Lynch* v. *Donnelly*—while neutral programs of financial aid to all private schools, religious as well as secular, are struck down, as they have on occasion been by our Supreme Court, simply because they encourage political activism by religious groups, activism which I would have thought was the fundamental right of all Americans. Nor do I believe that it is faithful to the Constitution's scheme for jurors in criminal cases to be licensed to substitute their lay allocation of church property or authority for that of a bona fide church, as they were shamefuly allowed to do in Reverend Moon's tax prosecution; or for officials in a State's educational bureaucracy to be licensed to superimpose their ideological criteria of what children should learn and who should teach them upon the religious criteria of families and churches, as seems to have occurred in Nebraska.

In decisions that some members of this subcommittee may deplore and in decisions that some may applaud, I fear, in short, that this Nation is departing dramatically from the relationship between church and state so wisely contemplated by the Framers of our Constitution. To the extent that the State and Federal judiciary either tolerate or engineer departures of this sort, it is not only those institutions to which we must appeal, it is also to the legislatures, both State and Federal—in other words, to Congress itself.

The courts of California were permitted by the U.S. Supreme Court to remain completely passive when then Attorney General Dukmejian, now California's Governor, imposed a receivership on an entire church—something that had not happened since the 19th century, when it was done to the Mormon Church in blatant violation of constitutional principles. When that happened in California, it was the California Legislature, not the courts, that responded by enacting limits upon such shameless pretensions to power. I think we have grown too accustomed to the fallacy that only courts may be relied upon to safeguard constitutional liberties. It is the mission of legislatures as well to be concerned about these matters and, for this reason, to the extent that the U.S. Supreme Court remains inactive while the Internal Revenue Service or the Department of Justice or State officials invade the sacred precincts of religion or prop themselves up with religion's supporting symbols, I believe it is Congress that should consider measures for redress.

It is especially appropriate that such measures should concern the religion clauses. For, unique among the protections of the Bill of Rights, the protections of the religion clauses of the First Amendment create not simply rights for individuals and minorities against the State; they create, in addition, a structural principle of disengagement between two spheres of life.

When that principle is violated, it is not only the rights of identifiable victims that are savaged; at risk is a form of society to which, for better or for worse, the Constitution commits us all.

It therefore seems especially fitting that, whatever role courts might play in the elaboration and enforcement of rights against Government, Congress should play a special role in preserving a structure of government that makes the very idea of rights have meaning.

In our society, I believe that such a structure requires the vigilant separation of the ecclesiastical and civil realms—not the expulsion of God from life, but the separation of the realms of God and of Caesar.

I believe that this subcommittee is to be commended for initiating what may be the first serious inquiry at this level in a very long time into the state of that separation in America today, and I trust that the subcommittee will keep in mind the broad considerations that I have tried to outline as it listens to the witnesses who follow.

Thank you very much, Mr. Chairman.

[Material submitted for the record follows:]

PREPARED STATEMENT OF LAURENCE H. TRIBE

I am honored by this Subcommittee's invitation that I appear to express my views on the federal constitutional underpinnings of religious liberty in America — and on what I perceive to be an escalating disregard by government for religious freedom and for the separation of church and state without which such freedom, and the open society such freedom sustains, cannot long endure.

Although I am the Tyler Professor of Constitutional Law at Harvard Law School, and have served as counsel in several major church-state controversies in the state and federal courts, sometimes representing and sometimes opposing churches and church leaders, I appear today on behalf of no individual, group, or institution, but solely in my capacity as a student of constitutional law and as a scholar in that field.

My prepared statement will be brief. I welcome the opportunity to shed what light I can on the Subcommittee's concerns by answering as fully as time permits whatever questions members of the Subcommittee or its staff may have.

While generalizations about such large matters are always treacherous, I believe that the ultimate aims of the First Amendment's religion clauses are to facilitate spiritual volition by showing no government favoritism toward, or animosity against, any religious group or view, but instead letting "each flourish according to the zeal of its adherents and the appeal of its dogma," _Zorach v. Clauson_, 343 U.S. 306, 313 (1952); to assure that spiritual institutions not be armed with the governmental powers of sword or purse, and that government not be wrapped in the mantle of infallibility that comes from identification with the divine -- a mantle that makes it possible for government to denounce its critics as enemies of the Almighty; and to guarantee such governmental accomodation to the uniquely powerful spiritual claims of religion upon the religious as may be reconciled with these basic objectives. The injunction that one render under Caesar the things that are Caesar's and unto God the things that are God's presupposes a society in which God's earthly messengers may not borrow Caesar's secular powers -- and in which Caesar's Roman Empire is never permitted to become the Holy Roman Empire.

Thus, the Supreme Court has authoritatively summarized the "purposes of the First Amendment guarantees relating to religion" as "twofold: to foreclose state interference with the practice of religious faiths, and to foreclose the establishment of a state religion familiar in other Eighteenth Century systems." Larkin v. Grendel's Den, 103 S.Ct. 505, 510 (1982). Striking down a statute delegating commercial veto power to churches and thus "enmesh[ing] churches in the processes of government," id. at 512, the Court in Grendel's Den recalled that, "[a]t the time of the Revolution, Americans feared not only a denial of religious freedom, but the danger of political oppression through a union of civil and ecclesiastical control," id. at 512 n.10. Whenever civil authority seeks simultaneously to don the sanctifying cloak of religious ceremony and to wield the supreme authority to tailor religious destiny, both the denial of religious freedom and the danger of political oppression are realized.

That denial and that danger confront us increasingly today. In disputes over matters as diverse as the teaching of children and the taxation of income, government institutions at all levels are arrogating to themselves the power to define new boundaries between the secular and the sacred — to swallow the life of the spirit within the bowels of the bureaucracy, and to surround the secular halls of the state with the sacred garb of the church.

It is hardly faithful to the vision of the Framers for courts to hold that legislatures may initiate their proceedings with official prayers pronounced by publicly funded chaplains -- but that children may not initiate voluntary prayers on public premises even after school hours. It is hardly consonant with what the Framers envisioned for the most sacred symbols of Christianity to be placed, at public expense, in a city's central square -- while neutral programs of financial aid to all private schools, religious as well as secular, are struck down because they encourage political activism by religious groups. Nor is it faithful to the Constitution's plan for jurors in criminal cases to be licensed to substitute their lay allocation of church property or authority for that of a church, or for officials in a state's educational bureaucracy to be licensed to superimpose their ideological criteria of what children should learn upon the religious criteria of families and churches.

Both in decisions that some members of this Subcommittee may applaud and in decisions that some may deplore, this Nation has departed dramatically from the relationship between church and state contemplated by the Constitution. To the extent that the state and federal judiciary tolerate or indeed engineer such departures, it is not only to those institutions that we must appeal but also to state legislative assemblies and to Congress itself.

When the courts of California were permitted by the United States Supreme Court to remain inactive when then Attorney General George Deukmejian imposed a receivership on an entire church, it was the California Legislature that responded by enacting limits upon such shameless pretensions to power. Just so, to the extent that the United States Supreme Court remains inactive while the Internal Revenue Service, or the Department of Justice, or state officials, invade the sacred precincts of religion or prop themselves up with religion's supporting symbols, it is Congress that should consider measures for redress.

To be sure, violations of the First Amendment ordinarily appear in cases involving unpopular minorities -- groups and individuals unlikely to attract sufficient political support to make Congressional action feasible. But, unique among the protections of the Bill of Rights, those of the Religion Clauses create not simply rights for individuals and minorities against the state but a structural norm of disengagement between two spheres of life. When that norm is violated, it is not simply the rights of identifiable victims that are savaged; at risk is a form of society to which, for better or worse, the Constitution commits us all and from which, one may hope, we all stand to gain.

It thus seems fitting that, whatever role courts might play in the elaboration of rights against government, Congress should play a special role in preserving a structure of government that makes the very idea of rights meaningful. In our society, such a structure requires the vigilant separation of the ecclesiastical and civil realms. I believe that this Subcommitee is to be commended for initiating a serious inquiry into the state of that separation in America today.

Senator **Hatch**. Thank you, Mr. Tribe.

[Applause.]

Senator **Hatch**. Mr. Ball, we will turn to you at this time.

STATEMENT OF WILLIAM B. BALL

Mr. **Ball**. Thank you.

Mr. Chairman, Senator Leahy, ladies and gentlemen, I appreciate the opportunity of coming before you this morning to provide some observations with respect to the state of religious liberty in our country at the present hour. I have conducted constitutional litigation in the courts of 22 States of our country and have appeared in upwards of 20 cases in the Supreme Court of the United States involving religious issues on behalf of many different religious groups. There is a great deal of religious liberty litigation in the courts at the present time. Some of these cases ought never to have gotten to court. Some are baseless.

But, many indeed are meritorious.

As we note these cases in the media, we need to keep our perceptions finely tuned. Not every religious claimant who says "God told me to" is worthy of belief. But similarly, neither is every Government agent who proceeds against religious bodies in this country.

Today in my effort to afford you an updating on the state of religious freedom in the country, I feel I should direct your attention not to a series of specific cases but to two points on which I have the liveliest sense of concern for the well-being of our freedom. By and large, discussion of these areas will not in a direct and tangible way point to any specific legislation which the Congress might see fit to adopt. But I feel that the discussion may be vital to guiding the congressional mind as it grapples with matters which touch upon religious liberty.

The two points can be described as: First, overkill in the name of the public interest; and, two, penurious recognition of the realm of the sacred.

To understand both points, and these points I think work together, we need to recall that the framers of the first amendment did not feel that religion was well enough protected by providing it all the other first amendment freedoms: speech, assembly, the press.

No, they put a special fourth freedom into the amendment: freedom of religion. The first amendment protects religion because it is religion. It treats religion differently because religion is different. But neither religious liberty nor governmental authority is absolute. Where Government and religion come into conflict, how do the courts resolve that conflict? The Supreme Court has laid down a few very useful guidelines to answer that question. It has said that the person who claims violation of his religious liberty must prove two things:

One, that the religious practice is based on sincere belief and it is essential to his religion.

Second, that the Government activity in question will be injurious to that practice.

The Government however, likewise, must prove two things:

One, that the harm is justified by something called a compelling State interest, not just a public interest.

Second, the Government must prove that there does not exist some alternative means of realizing that interest without doing them harm.

The Supreme Court has also held that while Government can obviously have some relationship to religion, it may not regulate, exercise surveillance over, or attempt to control religious ministeries. This kind of Government involvement with religion is what the Court has called "excessive entanglement."

Now, to address my two points very briefly.

A number of lower court decisions lately have sanctioned governmental overkill in religious liberty cases by ignoring the requirement that Government may restrict religious liberty not in the name of a public interest but solely in the name of a compelling governmental interest—that is a supreme interest, a supreme societal interest. And those same courts have also ignored the requirement that Government is to be put upon its proof that such a supreme interest exists.

In the *Wisconsin* v. *Yoder* case to which Senator Hatch referred, a case in which I argued on behalf of the Amish parents some years ago, the Supreme Court said that it was not enough for Government to say that its coercion of Amish children was justified by such an interest. The Court said that it would searchingly examine the governmental claim to see whether the Government had actually put evidence into the record which would prove the interest it claimed.

In the distressing recent case in Nebraska, which has resulted in so many jailings and confiscations, that proof was never, never adduced.

I join in the revulsion which Senator Hatch has expressed over the continuance of these incredible harassments of Christian pastors in that State.

Another aspect of this danger of overkill in the name of public interest is seen in the unfortunate rationale adopted by the Supreme Court itself in *Bob Jones University* v. *United States*. There, the Court held that the tax-exempt status of a religious institution must be destroyed on the ground that the institution declined, on proved sincere religious grounds, to observe what the Court called Federal public policy. That term is nowhere found in the Constitution and nowhere defined by the Congress. Irrespective of one's opinion concerning the Bob Jones theology and its ban on interracial dating, the principle on which the Court based its decision is extremely dangerous. There are many things called Federal public policy and thus there are many new pretexts for intervention of Government to suppress religious liberty.

Closely related is my other point: Narrowness in recognizing the realm of the sacred. It is not infrequently happening that legislative bodies, not deeply acquainted with the meaning of religious liberty and anxious to get on with the business of adopting useful social legislation, include religious organisms within the sweep of regulatory language along with businesses, industries, secular organizations or other secular enterprises or they at least leave in doubt, and thus leave to the public and to religious bodies, the costs and burdens of subequent litigation. I will not now discuss a major example of this which pends in the Senate at the present hour.

Finally, adequate judicial review is greatly needed in religious liberty cases. I am perplexed that when so many credible and major religious bodies asked the Supreme Court to review, simply to review, Dr. Moon's case, that review was denied.

These religious bodies deem the case momentous in terms of their freedoms, irrespective of whether Dr. Moon was correct or incorrect in his challenge to governmental action. It seems to me quite unfortunate that the case was not heard.

A narrowly penurious attitude toward religion in the occasional statements of governmental leaders is seen in statements that religiows leaders ought not to be heard to speak out on controversial issues, especially if they are what is called the "single issue." The history of our Nation cries out to the contrary. Great issues in our history from slavery through abortion have called for religious witness and the Constitution demands that that witness be allowed the fullest scope. We must not be afraid of religious controversy; we must be afraid of the suppression of religious controversy.

I do congratulate the committee once again on its having called for these hearings. I am grateful that it is now proceeding to explore in more detail some of the real problems which are being faced in our country today concerning religious freedom.

Thank you, Mr. Chairman.

Senator HATCH. Thank you. [Applause.]

Thank you so much, both of you gentlemen.

I have a number of questions I would like to submit to you. I think they are important questions in order to make this record. But in the interest of time, I think I will submit them to you in writing. I do have some other questions when we call you back.

[The following was subsequently received for the record:]

RESPONSES OF MR. BALL TO QUESTIONS OF SENATOR HATCH

1. Is it, in your opinion, feasible to achieve complete separation between church and state; and even if it is feasible, is it desirable?

   Total separation is not possible, since our churches exist in a society which, for the good of all of its citizens, has organized a government. And our government lives in a society in which churches abound. Inevitably government and churches have relationships, and thus any absolutist concept of church-state separation which would require the antiseptic avoidance of such relationships is absurd. Worse, however, is the idea that government may regulate churches or church ministries, exercise surveillance over them, confine churches "to the sacristy", define their doctrines, entangle itself in their affairs, or arrogate to itself a role superior to the church. Indeed, traditionally in America, it was wisely deemed that the state has a positive duty toward religion to protect religious liberty.

2. Is a wall between church and state what the First Congress* intended when it passed the First Amendment?

   The framers of the Constitution did not speak of a "wall". But they clearly intended avoidance of a state church and the greatest protection of all other churches.

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* I am mystified by your reference to "the First Congress".

3. Do you feel the framers of the First Amendment, in adopting the Establishment Clause, contemplated an absolute ban on government aid to churches, even if that aid were non-religious in purpose and distributed in a non-discriminatory manner?

   The framers expressed nothing on the matter when, after extensive deliberation, they integrated their views in the written Constitution. When one is asked such a question, one must return the question by asking what is meant by "aid". Certainly subsidy was intended to be avoided and tax exemption was intended to be encouraged.

4. Do you feel that we need more guidance from either the Congress or the Supreme Court in defining the proper standard for evaluating claims of deprivation of free exercise rights? In other words, do the American people and American churches have a clear picture right now on what standard will be applied when the courts consider whether a religious practice may be upheld in the face of a civil law?

   I think that the Supreme Court has laid out, in Sherbert v. Verner and Wisconsin v. Yoder, what is probably the best possible guidance for resolving Free Exercise questions. However, some judges have applied those teachings in niggardly fashion. It is up to attorneys defending religious liberty causes to push very hard to get courts to understand the full implications of the Sherbert test.

5. What did the First Congress* intend to do with the Free Exercise Clause? Do you feel that the framers of the First Amendment thought that a religious practice could ever violate a legitimate civil or criminal law?

I am not familiar with any intention which the First Congress may have entertained specifically with reference to the Free Exercise Clause. As to the framers of the Constitution, I am also without actual evidence. If surmise will do, I would assume that they would have considered that not every religious practice could be exempt from application of civil or criminal law.

6. Do you endorse the proposition that if we go too far in pushing the government out of the churches in our quest for separation and so-called "neutrality", that we will end up creating a society in which religion is in effect discouraged and an anti-religion attitude is fostered instead?

This has already happened, and at the very heart of our society - namely, in the education of the millions of our children in the public schools. It is utter nonsense even to suggest that our public schools are religiously "neutral". They are in fact pervasively secularist. As Justice Stewart predicted, we now have a tax-supported religious establishment of Secular Humanism.

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* Again, I am puzzled by your reference to "the First Congress".

7. Mr. Ball, in an article you wrote for a book entitled Church, State and Public Policy which was published in 1978, you stated that mediating institutions, such as church-sponsored private schools, were being overtaken and emasculated by government. Do you still feel that way?

I believe that the governmental threat of takeover continues today, and that the private schools' self-emasculation continues. All of this I set forth in my testimony on "Governance in Education" before the Senate Committee on Labor and Human Resources on October 19, 1983. I hope that this may be more widely read.

8. You also observed in the article that church schools needed to take a stand - to resist unconstitutonal violation of their right to educate. Have you seen any increase since you wrote the article in the willingness of church schools to take a stand, to fight the government?

Happily, yes. Evangelical and fundamentalist Christian schools have taken the lead in resistance and deserve great credit for that.

9. Do you disagree with the decision of the Nebraska Supreme Court in Nebraska v. Faith Baptist Church of Louisville, 301 N.W.2d 571 (1981)? Why?

I disagree with it, but I must at once add that the Nebraska Supreme Court decided that case the way it did on the basis of the poor trial record on which it had to base its decision. The seemingly unending woes in Nebraska stem not only from intransigant and biased local government officials but also from that sadly deficient trial record.

10. From some of the comments we heard at the June 26, 1984 hearing, it seems that a lot of people are critical of the way our courts are handling the religious freedom cases. Do you agree? What are the main problems - inconsistency? Or approach?

It depends on which cases you have reference to. Some cases have been decided extremely well by our courts. The NLRB-parochial school cases, the Christian school cases in Vermont, Kentucky and Maine: these are examples of good decisions. So it's a mixed bag - some good court decisions, some bad. The problem in the bad cases must be seen under two headings: (a) How well was the case set up? Were the right issues raised? How good was the record? (b) Did the court have sensitive appreciation of religious liberty? Did it jackknife the case procedurally (as by, for example, improperly granting a motion for summary judgment)? Did the court express bias? Inconsistency is not the problem; understanding religious liberty is the whole problem.

11. Do you agree that in every case involving the First Amendment, a court will be faced with a balancing test - state interests versus an individual's or a group's right to freedom of religion - and that often that test is difficult to apply?

No - that states the matter too simply. It's never a question of "public interest". The "public interest" has nothing to do with the matter. The government may prevail in a religious liberty case only if it proves that its action is justified by supreme public necessity and - repeat, and - if it proves that no less restrictive means exist to meet that necessity. In this connection, I commend to your attention the two excellent opinions from the Ninth Circuit in the Callahan v. Woods cases (658 F.2d 679 (9th Cir. 1981)); 84 Daily Journal D.A.R. 1281 (April 24, 1984) (No. 83-1688)).

12. Obviously, whenever that balancing test is applied, one side will win and the other will lose. Do either of you believe - and I recognize this is a practical question, not necessarily a constitutional one - that when the individual loses, it is ever appropriate in our legal society for that individual to wilfully violate a valid court order?

No, if by "valid" you mean a court order which is in compliance with the Constitution.

Senator **Hatch**. Let me turn to Senator Leahy at this point.

Senator **Leahy**. Thank you. I appreciate that, Mr. Chairman.

I sit here and I keep moving up the time that I have to leave for the next hearing. I think this is probably the most interesting thing happening on Capitol Hill today, some of the issues that are being raised here, which really requires selling.

I was one of those Senators who joined in a letter to the Attorney General, and I think perhaps, Mr. Chairman, you were also asking him to seek certiorari in the *Moon* case in the Supreme Court to get these issues settled.

We will also have, Mr. Chairman, I understand, be allowed to have at the end of this hearing Rev. Paul Weaver from Vermont to put a statement in.

Senator **Hatch**. We will be happy to do that.

Senator **Leahy**. I would welcome him for the record.

Senator **Hatch**. We will take his statement.

Senator **Leahy**. He is a well-respected religious voice in our State.

I would like to ask Professor Tribe a short question.

In your view, does the State have an interest in protecting the physical well being and safety of children even if to protect them would interfere with the sincere religious beliefs of a child's parents?

Mr. **Tribe**. Senator Leahy, I believe the answer is "yes," the State does have that interest and religion is not an excuse under our Constitution for inflicting harm on helpless people.

But in answering that question—and with a view toward the recent events in Vermont where, as I understand it, Judge Mahady ordered that a number of children could not be detained for some 72 hours in order to find out whether there was abuse—in answering that question, I do want to stress this: Paranoia and suspicion are no substitute for concrete reason to believe that harm is being done. It is all too easy for people looking at an unusual or an unpopular religious movement to characterize those who are under its sway as abused and to act on the basis of that belief, whether or not there is any evidence of it.

It seems to me that, as long as we are going to recognize, as we must, the power of Government to protect helpless people, including children from abuse, whether in the name of God or in the name of any other local, as long as we are going to recognize that power we also have to recognize the grave danger of the abuse of that power and we have to create protections against such abuse. And among such protections there must be a requirement—before a Government intervene, intervene in what appears to be a bona fide religious movement—there must be a requirement of some objective reason to believe that, apart from the majority disagreement with the particular movement, something is happening which is unlawful, coercive or endangering to the health or safety of individuals.

In the absence of such objective reason, I think that mere suspicion should never suffice.

Senator **Leahy**. Well, that is a standard that you would apply to allow Government decisionmakers to intervene over the religious objections of parents.

Mr. **Tribe**. If there is objective evidence of direct abuse, that is correct, Senator.

Senator **Leahy**. My last question, and I have a number of questions I want to submit for the record to both the witnesses if I might, Mr. Chairman, but my last one is that the FBI and the Justice Department have issued guidelines for many of their agents to pose as clergy in undercover operations.

Do think that there should be—that this should be allowed or should there be a statutory ban prohibiting the use of such cover by the Government?

Mr. **Trible**. Senator, my reaction to that is a mixed one. It does seem to me that there is a legitimate governmental interest in assuring that the good name of religion in America not be abused by groups that simply don the mask of religion in order to obtain various benefits. But at the same time, techniques whereby Government sullies its own hands by impersonating religious believers leave me deeply troubled. It seems to me that the use of informers and undercover agents in law enforcement generally, although important, is easily subject to abuse and that certain forms of Government impersonation are so inherently troublesome and problematic that, without clear proof that they are indispensable to law enforcement, which I seriously doubt, I would think that practices of that kind should be legislatively disapproved.

Senator **Leahy**. Thank you.

Mr. Chairman, I appreciate the courtesies. I will submit the rest of my questions for the record. I know you have a long agenda.

Senator **Hatch**. Thank you, Senator Leahy.

I will submit questions as well.

I want to thank both of you gentlemen for your excellent statements here today. I think you have added a great deal to this hearing in setting the tone and establishing some of the problems which do exist or may exist—may exist and which may very well be major problems in the future. And I think to that extent we really have appreciated having both of you with us.

Now, we will excuse you for the time being but I would like to be able to ask you to be prepared to return to the table after our next several witnesses so that we can have a discussion concerning specific details regarding the issues they raise. We really do greatly appreciate your opening remarks which have set, in my opinion, the proper constitutional tone for this hearing. We will keep your comments about the Constitution in mind as we proceed.

Mr. **Trible**. Thank you, Mr. Chairman.

Mr. **Ball**. Mr. Chairman, may I, when we return, have the opportunity to respond to Senator Leahy's question concerning the Vermont parents?

Senator **Hatch**. I would be happy to have you respond at this point.

Senator **Leahy**. I would be happy to hear him now.

Senator **Hatch**. While Senator Leahy is here.

Senator **Leahy**. I was trying to save the time.

Mr. **Ball**. I will save the time——

Senator **Leahy**. As you could imagine, the question is one, the very substance of the question would be one of interest, whether it involves anything in Vermont or any of the other 49 States. But I must admit that my attention is focused a wee bit more because of Vermont.

Mr. **Ball.** I join completely in Professor Trible's answer to your question, but with this addition. I think we have seen in a number of States lately that the State really considers itself to be the superior parent. It provides regulation and frequently licensing of activities upon which it ought not to regulate and in which it should not require a license. And thus at times the real question becomes not whether the parents were taking care of their children properly, or whether a school is operating to the benefit of children, but merely the technicality of whether it got a license.

In this view the matter is then allowed to proceed by criminal complaint against the parent or the operator of the school merely on the grounds that he did not recognize the State's right to impose licensing upon him.

Senator **Leahy.** I think you raise a very important point. We do seem to have more and more and more of this idea that somehow, whether at the municipal, State, or Federal level, we are going to take over and, at least when I was growing up—and I am only 44, so it has not been that long—what was considered the responsible duty of our parents. And when I was growing up in Vermont I would assume that there were certain responsibilities that my parents had and they would pass on those responsibilities to us, too, with our own children. And I must admit, Mr. Chairman, I think my mother still feels she has those same responsibilities when I go home.

But——

Senator **Hatch.** Knowing you, Senator, I am sure she is going to watch over you very carefully.

Senator **Leahy.** But the point is a good one, at some point we are going to ask the question, may be that is one of the most valuable things out of these whole hearings, ask the question, At what time do we say wait a minute? Parents have some responsibility to their children and their children vice versa have some responsibility to their parents and these are not responsibilities that Senator Hatch nor I or anybody else can legislate or take care of. They should be taken care of at the basic places where they should be done.

Senator **Hatch.** Well, I am going to thank Senator Leahy for his interest in this hearing and of course the excellent issues that he has raised.

Thank you so much, gentlemen.

We will now ask our next two witnesses to come forward. They are Pastor Everett Sileven of the Faith Baptist Church in Louisville, NB; and Dr. Greg Dixon, who is the national chairman of the Coalition of Unregistered Churches, Indianapolis, IN.

Both of these men have had considerable contact and experience with the State government of Nebraska in recent litigation which centers on the issue of State legislation of a church-run school.

We will begin with you, Dr. Dixon, if we can.

STATEMENTS OF PASTOR EVERETT SILEVEN, FAITH BAPTIST CHURCH, LOUISVILLE, NE; AND DR. GREG DIXON, NATIONAL CHAIRMAN OF UNREGISTERED CHURCHES, INDIANAPOLIS, IN

Dr. DIXON. Thank you very much, Senator Hatch, Senator Leahy.

Again, may I say that I appreciate the opportunity of being here today, especially when I understand that hundreds have asked for the privilege of testifying.

I also would like to say that I heard nothing from Mr. Ball and Mr. Tribe that I would disagree with and I appreciate the gentleman coming and so succinctly putting forth what I believe is our faith at this time.

Senator HATCH. You will never hear a more succinct or a more competent discussion of constitutional ramifications concerning religious freedom than these two gentlemen have given here today.

Dr. DIXON. I agree, sir.

It was the cause of religious liberty that gave birth to this great Nation. Now it seems that the Nation is determined to destroy religious liberty. John Leland, the leader of the Virginia Baptists objected to the first drafts of the new Constitution. He asked: Where are the guarantees of complete religious liberty; where is the protection for the individual to believe or not to believe, to worship or not to worship, to be free to support his church or any religion or any religious cause and free also from Government to support some particular church? His influence caused Madison to introduce the first amendment that has been the guardian of religious belief and practice for these 200 years.

It was also the bleeding back of Baptist street preachers that inspired Patrick Henry to give his "Give me liberty or give me death" speech. No nation on earth has been blessed as this Nation. We must either say that God is responsible or that America is an accident of history. I believe, along with most Americans, that the hand of God has made this possible.

But it seems to me that the government at all levels now is saying to God: We do not need you any longer or your ambassadors. For all practical purposes the first amendment, in my opinion, is now dead. The religious guarantees of the Constitution is not but a scrap of paper, like Russia and other Iron Curtain countries, where you are free to believe but not practice your faith.

Lower court judges continually say: "We cannot rule on the Constitution." However, they are quick to rule in matters that, in my opinion they have no jurisdiction, such as matters concerning church discipline, as an example.

The state has literally declared war on religion. There are over 6,000 believers on trial for their faith in America today. Through zoning laws, churches are being shut down, Bible studies in homes have been stopped, and cities have demanded that an infant church have as much as 1 acre to begin. A judge recently closed a church in Sparks, NV, because the pastor said: I am a preacher.

But the judge said: No, you are a school teacher. And therefore he closed the church. Besides, a pastor was jailed and a church padlocked in Nebraska and the other pastors—and Pastor Gelsthorpc is here present today who has had untold amount of persecution in North Platte.

I saw seven Godly men recently tried in abstentia in a courtroom in Cass County, NB. A pastor and his wife were being tried for battery in Bristol, IN at the present time. What was their crime? They gave a child three whacks each in a church school. The judge said to the pastor at the indictment hearing: If the child had just said it hurts, you could be charged with battery.

A couple in Indiana are being tried at this time for reckless homicide because they believe in prayer rather than medicine with regards to health of their child. And yet the State of Indiana covered up the death of a baby who was allowed to starve to death in a Bloomington hospital. And I might add that if in fact there are 87 deaths attributed to Faith Assembly Church in Indiana, there are 1.5 million deaths due to abortion perpetrated by the Federal Government every year.

The IRS is now a terrorist organization, they have become so strong that they can jail religious leaders for legitimate practices.

[Applause.]

Dr. DIXON. The press has reported——

Senator HATCH. If I could interrupt you. I really would like to ask the help of all people here assembled to please not show any emotion throughout this hearing. I hate to tell you that because I know that these are emotional issues, but we have such a limited time and I have another very important hearing that has to begin at 2 o'clock and I am going to have a very difficult time getting through with this one. So I know how important this is and I know how much you feel and I respect you but I have to ask that we have no other demonstrations. And I hate to put a damper on that but it is just very important that we get through this testimony, and we have a number of very important people.

Dr. DIXON. I will be through in just a minute, Senator.

Senator HATCH. Thank you.

Dr. DIXON. The press has reported that IRS agents now pose as pastors and CIA agents post as missionaries. I am afraid that this is putting our total worldwide missionary efforts in grave danger. This is a direct assault on the church, but what happened in Vermont last week tops it all, in my opinion.

Without a valid warrent or probable cause or due process, 112 children were snatched from their parents at dawn and held for 11 hours. Thank God for the judge that let them go before the 72-hour period.

There are four areas, in my opinion, that we are having the most problem with:

No. 1, the IRS thinking that they ought to have jurisdiction concerning church finances.

No. 2, the child protection agencies that have received millions of Federal funds all over America and have established these child protection agencies in the States and they are abusing their power concerning children and their parents in regard to the educational process and discipline. And, Senator, may I say with all my heart, I believe that we are not just talking about States' accreditation but it will not be long unless something happens that is accredited or has the imprimatur of the Federal Education Department they will not be able to go on to higher education. Also, they will not be able to get a job.

The other area is in the area of health. As an example, midwives have been outlawed in the State of Indiana. People have been criminally prosecuted for practicing medicine without a license just because they give information concerning vitamins and health foods.

These primarily are the four areas that I think we are having the most problem in.

One other thing in closing. Some time ago a lady stood in Denver, CO to speak to an audience. She said: "I escaped from Russia when the Communists took over there. I escaped to a Baltic nation. I escaped when the Communists took over there. Then I went to Cuba. I escaped when the Communists took over there. Now I have come to America."

Somebody from the audience said: "Thank God you could come to America."

She said: "Yes, I thank God. But if America falls, there will be no place else to go."

Thank you.

Senator HATCH. Thank you, Dr. Dixon. I appreciate it.

[The following was subsequently received for the record:]

the AMERICAN COALITION *of*
UNREGISTERED CHURCHES

NATIONAL
COMMITTEE MEMBERS
- DR. GREG DIXON
INDIANAPOLIS, INDIANA
NATIONAL CHAIRMAN
- DR. EVERETT SILEVEN
LOUISVILLE, NEBRASKA
CO-CHAIRMAN
- DR. ROBERT McCURRY
ATLANTA, GEORGIA
SECRETARY
- DR. GENE HOOD
BEECH GROVE, INDIANA
TREASURER
- DR. B.C. GILLESPIE
CAMPBELLSVILLE, KENTUCKY
STATE CO-ORDINATOR
- DR. CLAY NUTTALL
FRUITDALE, MICHIGAN
CRISIS MANAGEMENT CHAIRMAN
- DR. LEVI WHISNER
BRADFORD, OHIO
NATIONAL PRAYER CHAIRMAN

A.C.U.C.
P.O. BOX 1224
Indianapolis, Indiana
ZIP 46206
PHONE 317-787-2412

June 29, 1984

Senator Orrin Hatch
Washington, D.C.

Dear Senator:

This letter is being written on my way back to Indianapolis. I want to thank you for conducting the hearing on Religious Liberty and the 1st Amendment. I count it as one of my greatest privileges to testify.

However, since the record will be left open for thirty days, I would like to set the record straight as to the position of the unregistered churches.

First, let me define what I mean by an unregistered church. An unregistered church is one that recognizes Christ alone as the head of the church based on many verses of scripture; but for brevity I will mention two: Matthew 28:18-20 - "And Jesus came and spake unto them, saying, All power is given unto me in heaven and in earth. Go ye therefore, and teach all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Ghost: Teaching them to observe all things whatsoever I have commanded you: and, lo, I am with you alway, even unto the end of the world. Amen." Ephesians 1:22, 23 - "And hath put all things under his feet, and gave him to be the head over all things to the church, which is his body, the fulness of him that filleth all in all." Therefore, an unregistered church recognizes no head secular or sacred but Christ alone.

Therefore, an unregistered church is unincorporated by the states and does not seek or retain 501(c)(3) not for profit status with the Federal Government. It does not seek or accept a license, permit, certification, registration, or accreditation by any state entity for any of its ministries. It neither seeks or accepts state funds, such as tuition tax credits, neither does it pay taxes because the church is not tax exempt in America; but nontaxable. Also, we recognize the truth in Chief Justice John Marshall's words, "The power to tax is the power to destroy." We also believe in the adage, "Come shekles come shackles."

Now in the light of the above, let me discuss William Ball and Larry Tribe's testimony.

I am in total agreement with what they said, for an incorporated church that is. When there is a question of government encroachment, they must do as the gentlemen suggested. They must argue entanglement, and the Government must prove a compelling interest and that there was no less restrictive way to accomplish their goal. However, by arguing entanglement the incorporated church has admitted that the Government has an interest in their affairs by virtue of their incorporation which in itself is a creature of the State.

Now, the unregistered church is different. We do not recognize any interest of government in the internal affairs of our churches unless it can be proven through due process that someone has committed a common law crime. That is injury to someone's person or property, and those charges should be criminal, not civil. This is exactly what Romans chapter 13 teaches. Note verse 3, "For rulers are not a terror to good works, but to the evil." Verse 4 says, "For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil."

For instance, Pilate said concerning Jesus, "Why, what evil hath he done?" Matthew 27:23. The Jews answered him, we have a law, and by our law he ought to die, because he made himself the son of God." Then Pilate said, "Take ye him and crucify him: for I find no fault in Him."

In other words there was no Roman law that Pilate could use to put Him to death. But their law was presented to Pilate concerning blasphemy and Pilate, being a coward and concerned for his job, listened to the rabble say, "Crucify him, crucify him."

In essence this is what is happening all over America. Let's use Nebraska as an example. The Constitution of the United States and Nebraska give

Faith Baptist Church every legal right to conduct an educational ministry. Of course they can wave this regulation, and they have done it before if the church recognizes the state's authority over them. Pastor Sileven and others would not recognize this authority (a legitimate governmental interest), therefore they tried to crush him.

Of course, it was all legal because they had "a law". But no evil (crime) was ever brought against Pastor Sileven.

We do not see the 1st Amendment in the terms of the establishment clause or the free exercise clause. We see it as a whole. We believe the simple but forceful language, if recognized by the courts, to be adequate.

"Congress shall make no law respecting an establishment of religion, or prohibit the free exercise thereof." In other words, the state will not establish a religion, and they will not hinder religion from propigating or evangelizing their faith.

We understand the word no to mean no. Therefore, to say Government has a legitimate interest in our churches is to recognize Government as Lord rather than Christ. To take a license or permit of any kind would be for us the denial of the Lordship of Christ. To pay direct taxes of any kind would be to recognize the State as sovereign rather than our Lord Jesus Christ.

Therefore unless it can be proven through due process that there is criminal activity, Government should leave the church to carry out its God given ministry. Therefore, for the State to pass any law regulating the churches' activities or ministries is unconstitutuional. In other words, no means no.

But it concerns me deeply that the lower courts constantly say that they cannot, or will not, rule on the Constitution. In that they are breaking the law by violating their oath to uphold and defend the Constitution.

In my opinion, no new legislation is needed unless it will strengthen the language and intent of the 1st Amendment. To pass new legislation would in my opinion, cheapen the 1st Amendment. If our liberties are not protected by it, then our liberties are gone anyway.

I trust that the courts of this nation will begin honoring the 1st Amendment, or good men and women will populate the jails in America as in other countries. Once and for all, it must be established again in our generation that we have the right to practice our faith in America as well as to believe it.

Now if you or no one else in the United States agrees with the position of the unregistered churches, our faith should still be protected by the 1st Amendment.

Thank you for your kind attention to my position on this matter.

Yours most sincerely,

Greg Dixon

GD/ct

P.S. I still maintain that for all practical purposes the Constitution is dead.

cc: William Ball
Larry Tribe
Everett Sileven
Robert McCurry

Senator **Hatch**. Pastor Sileven, we are happy to take your statement at this time.

STATEMENT PASTOR EVERETT SILEVEN

Mr. **Sileven**. Thank you, Senator Hatch. I want to thank you and your committee for having these hearings and I want you to know that it is a privilege to be here.

I have been in over 1,000 churches in the last 18 months and have spoken to over 1 million people face to face, I am here today to say that it is my candid opinion that Government at all levels has now become the adversary of the churches and freedom of religion.

There are now approaching 7,000 cases in this country where Christians are being prosecuted. Just recently in Milwaukee, two pastors came to me and said: "We started a church in a home and we were told that if we opened our bibles one more time in these homes we would go to jail."

Today there are parents in Florida who are about to lose their children because they refused to send them to a State-approved school.

It is not because the quality of education is poor. In fact, test results indicate that the quality and academic achievement is superior.

Today, as I sit here, there is a church in Redding, CA that is battling the State bureaucracy over its control of its day care center.

I too would agree that the IRS has become a law unto itself. In fact, without trying to be inflammatory, I think there are many people who feel that they are really the gestapo-like agency of our Government.

The Reverend *Moon's* case, the *Bob Jones* case, simply lay the foundation for which the IRS will continually come down upon churches.

Now for the first time we have one small Southern Baptist Church in the State of Georgia where a deacon turned in his pastor and church for not paying the Social Security tax even though it is being repealed, and the IRS has levied a $25-a-day penalty against that church, with the indication that they will sell their property if necessary to collect.

Nebraska has been the horror story of our Nation for a long time. In 1980, the Amish were prosecuted even though the *Yoder* case is in good standing. They were fined. They refused to pay the fines. The State confiscated their buggies and sold them at public auction. Rather than fight, the Amish moved.

The Mennonites have been prosecuted consistently in the State of Nebraska for the education of their children.

In York, NB, Rev. Moray is the pastor of the Apostolic Church. There were three State deputies who came into his church with guns on their hips and lined the people up against the wall and confiscated their records. The church then took their children to their homes to teach them. And as I sit here today, they are being prosecuted for truancy. And not one time has there been any evidence that the children have been hurt or that their education is lacking.

In Gerring, NB, the Church of Christ was prosecuted, its school had to move across the State line into Wyoming.

In Morrill, the Indpendent Baptist Church had to move across the State line to operate.

In North Platte, my wonderful friend Bro. Bob Gilthorpe who is sitting in the audience today, has spent 93 days in jail in North Platte. The court has levied fines against him of $200 a day and against his church also. Within the next 30 days they are going to sell his personal property, his home, and his church building to collect those fines.

Also in other cities, for instance Central City, NB, there is a man by the name of Morrow who is a simple watch repairman. He was teaching his children at home. His wife is hiding in another county to avoid arrest, even though a jury found him not guilty when he was tried.

Also, there is another pastor in the State whose wife is hiding out in the State of Iowa to teach their children.

In Louisville, that is another story. In 1981, our church was padlocked for the first time. In 1982, I was arrested four times, spent 120 days in the Cass County jail.

On October 18, 1982, there were almost 100 praying ministers who were not even a part of the case at all, who were carried out, physically removed by 18 armed officers and the church padlocked for the second time.

Then in 1983, there were 7 of my men who went to jail, their wives and 32 children fled the State to avoid arrest and then I also, even in spite of the fact that I had filed briefs in my case, and my daughter had done the same, the judge put out a warrant for our arrest.

I recently returned to the State of Nebraska on April 26, voluntarily coming to the court, voluntarily recessing our school now, since we have a new law to operate under, waiting until it comes into effect on July 10. The judge vindictively sentenced me to 8 months in jail, stating right over the bench that he would like to have given me 2 years in the State penitentiary.

He stated, as well as Judge Case, that they were not bound by the Constitution in this case. That is in the record. They do not believe that the Constitution applies. And this is one of the problems that we are facing.

Also I was forbidden to have writing materials, to write books and pamphlets while I was in jail. I am now out on appeal.

It is very interesting to me, Senator, that in Nebraska the attorney general of our State was impeached by the legislature then the State Supreme Court overturned the impeachment. He was then indicted on three counts of felony by the grand jury. He was given a $10,000 bond, he was allowed to sign for his. I was given a $100,000 performance bond, a $10,000 cash bond. I refused to pay it. Thank God for friends who went out and collected the money to pay it.

I guess it is more dangerous to preach the gospel and to train children than it is to commit felonies in the State of Nebraska.

What is the problem? I think it has been touched upon, especially by Attorney William Ball, and that is the problem of definition.

We have a terrible problem with Government trying to define "religion."

It is very interesting that in the State of Nebraska, and President Reagan is falling into the trap by his advisors, and that is they are saying it is an educational issue not religious.

Now, that may be what Government defines it as, but in our country the Constitution, especially the first amendment, allows me to define the tenets of my faith for myself. Therefore, if I believe that education is in fact a part of my religious faith, no government, including the Department of Education, the IRS, or anyone else has the right to define away that part of my faith and put it under the regulation of the State, unless they can show harm. Not one time in 7 years have they shown harm to the children. In fact, they have shown we are doing a superior job in education.

I want to say just in closing that I have in fact submitted what I believe could be used as a basis for model legislation and I want to close by reading it because I think it contains the heart of what we need.

> No Federal, State, or local government shall define, classify, tax, license, approve, certify, restrain, or restrict or otherwise infringe on the practice of any sincerely held religious belief of any citizen of the United States. There are no compelling State interests that supersede the right of individual citizens to practice their religious beliefs. Religious beliefs shall be defined by the individual citizen and no citizen's religious beliefs must confrom to those of another, to be protected from the Government and its agencies. This act in no way diminished the ability of government at all levels to punish crime as defined under the common law.

I believe that would give the basis for which we would like to see legislation.

Thank you.

Senator HATCH. Thank you so much. We appreciate both of you making the trip here to testify.

I will say, Dr. Dixon, that the first amendment is not dead. This hearing is a perfect illustration of why it is not, and I intend to make sure that it is not. But I am also concerned that some of those who are the loudest, and properly so, in protecting the rights of free speech, and the rights of a free press, are perhaps not standing up as much as they should with regard to religious rights, and I am very concerned. I do not believe that pastors or ministers who are above the law either, but I am concerned when pastors are thrown in jail because of differences involving religious beliefs.

These hearings are very interesting to not only me, but I am sure there will be many people on the Judiciary Committee who would take great interest in the testimony we are developing this day.

I just want to thank both of you for being here. I will submit some questions to you in writing, and I would hope that you would answer them.

I would also like to ask you, Pastor Sileven, to ask your attorneys to submit as much detail as they can for our record concerning some of the things that you have said here today. We would like to look into this a little carefully and——

Mr. SILEVEN. Would you like to have a copy of the court record? We will give you the whole record if you want it.

Senator **Hatch**. I think that would be good, not for this record, but for our personal purview, and I think that anything else that you can do to help summarize the actual facts of the case, I would appreciate having for the record, in as brief a form as possible.

Mr. **Sileven**. Thank you very much.

[Material submitted for the record follows:]

PREPARED STATEMENT OF DR. EVERETT SILEVEN

RELIGIOUS LIBERTY AND ANALYSIS OF CURRENT STATUS

THE SYNOPSIS BACKGROUND OF DR. EVERETT SILEVEN

Dr. Everett Sileven was born April 21, 1939 near Muskogee, Oklahoma. His father was an itinerant Baptist preacher; his mother was a fine Christian lady. When he was four his mother died of cancer, and he moved with his father to California where he lived for a very short time. He and his brother were soon adopted by an Aunt and Uncle in Missouri by the name Mr. and Mrs. Marvin Sileven. Mr. and Mrs. Sileven were the owners of a 6,000 acre ranch, and Everett spent his growing up years in that area working long and hard hours in timber, cattle, and farming. He graduated from the Houston High School, Houston, Missouri in 1957. He attended Southwest Missouri State Teachers College; Hillsboro College in Hillsboro, Missouri; Washington University and Southern Illinois University, majoring in Business Administration. He worked for Ralston Purina Company in the research division and also was manager of Package Development for ConAgra of Omaha, Nebraska. He spent a short time as manager of Package Research for the Frito Lay Company of Dallas, Texas.

Pastor Sileven entered the full time ministry in 1975 after having completed his Master of Theology and Doctorate of Theology from Faith Baptist Theological Seminary in Morgantown, Kentucky. He has Honorary Doctorates from Freedom University in Orlando, Florida and Hyles-Anderson College in Hammond, Indiana.

Pastor Sileven is Pastor of the Faith Baptist Church in Louisville, Nebraska, which has experienced the awesome hand of persecution by the State of Nebraska since 1977. He has spent 157 days in jail for operating a Christian School without a license. His daughter has been subject to arrest along with seven of the parents of his church who spent 93 days in the Cass County jail in Plattsmouth, Nebraska.

Pastor Sileven is a patriot and a believer in the free enterprise system, constitutional government, and stands firmly on the principles of the founding fathers. It is due to his deep concern for America that an effort is being made to produce alternatives to the Marxist ideology being propagated in this country by founding the American Coalition of Unregistered Churches and its monthly magazine, the "Trumpet". Pastor Sileven is also a cooperating founder of the Nebraska Christian Political Action Committee. Dr. Sileven is traveling America on a busy speaking schedule as well as pastoring Faith Baptist Church.

SUMMARY

Religious liberty as known and protected by our founding forefathers, under the Constitution of the States and the United States, no longer exists in this country. There is a growing resistance to government encroachment upon these liberties, and unless the Congress does something substantial to restrain government from further encroachment, it is our fear that the government will perpetrate a second bloody Revolution in this country.

THE PROBLEM

I. DEFINITION OF RELIGIOUS LIBERTY

A. (Blacks Law Dictionary, third edition)

"The power of the will to follow the dictates of its unrestricted choice, and to direct the external acts of the individual, without restraint, coercion, or control from other persons"

B. (Myer vs. State of Nebraska 43S. CT. 625, 626, 262 U.S. 390.)

"The word 'liberty' denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, to establish a home, and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long regarded at common law as essential to the orderly pursuit of happiness by free men."

C. (Religious liberty)

"Freedom from dictation, constraint, or control in matters affecting the conscience, religious beliefs, and the practice of religions: freedom to entertain and express any or no system of religious opinions, and to engage in or refrain from any form of religious observance or public or private religious worship, not inconsistent with the peace and good order of society and the general welfare. See Frazee's Case, 63 Michigan 396, 30 N.W. 72, 6 AM. ST. Rep. 310: State vs. White, 64 N.H. 48, 5A. 828.

Now any liberty that requires a license is no longer a liberty. The definition of a license is also given in Blacks law dictionary and is defined as follows: "A permission, accorded by a competent authority, conferring the right to do some act which without such authorization would be illegal, or would be a trespass or a tort. A permit, granted by the sovereign, generally for a consideration to a person, firm, or corporation to pursue some occupation or to carry on some business subject to regulations under the police power. A license is in no sense a contract between the state and the licensee but is a mere personal permit neither transferrable nor vendible. That would be state exrel. Cuillot vs. Central Bank and Trust Company, 143 LAP. 1053, 79 SO. 857, 858.

In America, we the citizens are the sovereigns. Therefore, why is government continually trying to force licenses on us to perform those God-given, God-ordained, inalienable rights. If there are any licenses to grant, then we the people would be the ones granting them to the government officials since we are sovereigns and government is not the sovereign but is the servant and agent of the people.

II. THE FOREFATHERS UNDERSTANDING OF RELIGIOUS LIBERTIES

Mr. William Blackstone was probably the greatest jurist of the era of the founding of our nation. More of his commentaries were purchased in America than in England, and they were used extensively in the founding of our nation. I would like to quote from his commentaries as to the understanding of a man's relationship to his God.

> "Man, considered as a creature, must necessarily be subject to the laws of his creator, for he is entirely a dependent being. A being, independent of any other, has no rule to pursue, but such as he prescribes to himself; but a state of dependence will inevitably oblige the inferior to take the will of him, on whom he depends, as rule of his conduct: not indeed in every particular, but in all those points wherein his dependence consists. Consequently, as man depends absolutely upon his maker for everything, it is necessary that he should be in all points conformed to his makers will. This law of God is of course superior in obligation to any other. His binding over all the globe and all countries, and in all times; no human laws are of any validity, if contrary to this: and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original. Upon this foundation depend all human laws; that is to say, no human laws should be suffered to contradict these."

On the particular subject of sovereignty of the people, I will now quote Mr. George St. Tucker who was a famous jurist in the early 1800's in the state of Virginia. In his footnotes on Blackstone's commentaries he expounds the American Constitution on principle of government. He speaks extensively to the sovereignty of the people and I quote,

> "The American Revolution has formed a new epic in the history of civil institutions, by reducing to practice, what, before, had been supposed to exist only in the visionary speculations of theoretical writers....The world, for the first time since the annals of its inhabitants began, saw an original written compact formed by the free and deliberate voices of individuals diposed to unite in the same social bonds; thus exhibiting a political phenomenon unknown to former ages. This memorable precedent was soon followed by the far greater number of the states of the union, and led the way to that instrument, by which the union of the confederate states have since been completed, and in which, as we shall hereafter endeavor to show, the sovereignty of the people, the responsibility of their servants are principles are fundamentally, and unequivocably, establish; in which the powers of the several branches of the government are defined, and the excessive of them, as well in the legislature, as in the other branches, find limits, in which cannot be transgressed without an offending against that greater power from whom all authority, among us is derived; to wit, the people."

It is absolutely understandable by this quote that our early founding forefathers understood that all sovereign power rested in the people of the states. Our founding forefathers were extremely concerned about government intervention into the freedom of conscience and freedom of exercise of religion. They had fled from Europe for these very reasons. Therefore they insisted on the First Amendment to the United States Constitution that would prohibit congress from making any law concerning the establishment of religion and prohibiting the free exercise thereof. This amendment simply says that congress can make no law relating to religion. The question comes, what is religion?

Many of our forefathers have suffered jail, beating, confiscation of property, fines and other harassments because they refused to take licenses, permissions, permits, etc. from local and state governments to exercise their religious practices. Included in these practices was the collection and distribution of money and property, the education of children, public worship, and many other things. It also included the care for the elderly, the sick, etc. There is no doubt that to our founding forefathers religious liberty meant not only the practice and belief of religion but the defining for one's self what his religious beliefs and practices would be. The only limitations upon these practices would be the commission of the common law crying decency in order in the community. In other words, a court could only punish a crime which would be a crime by common law, biblical law, and by common usage such as harm to property, limb, or life and public order. As Blackstone says in his commentaries there can be no crime where there is no injury. There must be an injury before the government can step in and make any kind of prosecution or bring about any punitive action. When children are being taught at home by their parents and they are not being harmed physically or no one else is being harmed, how can the government step in and say this is a crime? When churches band together to educate their children and tests show that they are learning at a higher academic level than those attending the general government schools, how can this be a crime? I must emphasize here that we have to stay away from psychological, emotional, and mental definitions of abuse. These vary greatly among varying bodies. Many believe that teaching a child the Bible is mental abuse; some believe that causing children to memorize scripture is a mental abuse. Parents must be left with the sole responsibility of determining what goes into the mind of a child. This is nothing less than the religious beliefs and practices of most Americans.

III. WHAT IS CAUSING THE LOSS OF RELIGIOUS LIBERTY IN AMERICA

Religious liberty is dead in America. The reason I say that it is dead is because no religious practice is allowed in America that is counter to the interests of the state. For instance, in the Bob Jones case the courts have said it is not acceptable to believe and practice segregation in marriage and dating and courting because that violates public policy. In the Faith Baptist Church case of Louisville, Nebraska the state has said that it is not acceptable to believe that education is a part of your religion and therefore, in this state you are prohibited from practicing the free exercise of educating your own children. All over the United States the IRS'is intruding into church affairs because they have determined on their own that certain practices of certain religious groups is not acceptable religious practices for public policy. In the Rev. Moon case they have said that it is not an acceptable religious tenent in America for a minister to put church funds in his own name in a bank account and administer those funds even if it is the desire of the church members. The IRS and state governments have launched upon a massive program to make a legal definition of a church and what is acceptable religion. This is totally unacceptable to us in America as American citizens if we are to have religious liberty. In fact, Russia does the same thing. They say that there will be freedom of religion, but religion and state shall be separate and that religion and education shall be separate. You cannot separate religion from government, government in itself is a religious function. The Roman Empire realized that it could not continue its current mode of operation without the many false gods and Caesar worship. When Christians came along and claimed that Jesus was Lord and not Caesar, it threatened the very empire. In America our constitutional republican form of government is and was dependent upon Americans having religious liberty. The reason religious liberty no longer exists in America today is because the current form of government is not what our forefathers gave us in the beginning. The current form of government that we practice is one of government being the rulers and the people being the slaves and religious liberty does not fit in that mode of operation.

IV. CURRENT LEGAL OPPRESSION

A. (People having served or now serving jail time in prison for non criminal religious beliefs)

1. Pastor Everett Sileven, Faith Baptist Church, Louisville, Ne. He has served 157 days and has the potential of 150 days yet to serve.

2. Pastor Bob Gelsthorpe, North Platte Baptist Church, North Platte, Ne. He has served several months and faces possible confiscation of church property and personal property, as well as his bank accounts and fines.

3. Rev. Agnes Rich, Grand Island, Ne. She is facing jailings and confiscation of property for fines.

4. Rev. Sun Myung Moon, he is facing potential jailings.

5. We have heard of and have not yet substantiated the fact that there are some 18 other pastors in America facing jailings over various charges relating to their religious beliefs.

B. Litigating cases

1. There are approximately six thousand cases being litigated in in the United States of America by government against churches

and religious organizations. The Gibbs and Craze law firm of Cleveland, Ohio is handling somewhere in the neighborhood of three to four thousand of those cases. These cases involve such things as

A. Zoning Laws
B. Building Codes
C. Health Codes
D. Welfare Involvement
E. So called Child Abuse
F. Educational Ministry Concerning Licensure
G. Home Schools
H. Social Security Taxes
I. Property Taxes
J. Labor Department: minimum wages, workman's comp., etc.
K. IRS Harassment over Taxes and Unapproved Political Activity

V. THE SOLUTION

The government must take at face value every single individual's definition of his religious beliefs. The only test government should give any individual concerning his religious beliefs is:

Has the exercise of the religious belief resulted in a crime against life, property, or community tranquillity?

HOW OUR RELIGIOUS LIBERTIES WERE VIOLATED BY THE STATE OF NEBRASKA

In 1977, the members of Faith Baptist Church voted to start a weekday educational ministry for their own children. They started this ministry because they were conscience bond to obey their Lord Jesus Christ who commanded them in scripture (Deut. 6, Prov. 22:6, Ps. 101:3, Jer. 10:2, Eph. 6:4, and others) to establish the life training of their children in godliness and obedience to their Lord Jesus Christ and the Bible. While most Christians in the past felt they could send their children to a public school and still obey God in these commands, today that is not the general feeling of devout Christian parents. Because of the excessive secular humanism taught in the now, government schools, these schools are actually hostile to God and people who are devoted to him. Therefore, today, the majority of devout Christian parents feel they must remove their children from those government schools and from private schools who are controlled by the same state apparatus that has secularized the government schools. Thus, you have many home schools and many weekday educational ministries as an integral part of the local church.

This is the kind of ministry that Faith Baptist Church of Louisville, Nebraska started.

The state of Nebraska, however, claims sovereign jurisdiction over education. There was no grant of such authority from the people of the state of Nebraska to the government in this area. In fact, the people of the state have repeatedly voted down compulsory education laws and amendments.

The United States Congressional enabling Act in 1864 which actually created the State of Nebraska, demands the State of Nebraska "harm no inhabitant in person or property because of his religious beliefs." (See appendices _E_).

The Constitution of Nebraska, Article 1, Section 4 states "infringement of conscience shall not be tolerated". (See appendices _H_ etc.) The religious conscience of myself and the members of the Faith Baptist Church are two-fold.

1. We must train and educate our children in the Lord.
2. The subjection of our church and our children to the control of the humanistic religious organization, namely, the Department of Education, to allow them to determine teachers, methods, and curriculum violates our conscience as it relates to the education of our children.

The court order of April 23, 1979 (See appendices _K_) gave us three choices.

1. To submit our church to the foreign religious cult, the Department of Education.
2. To close the school.
3. To move out of the state.

This court order violated our conscience in exactly the same way the assumed statutes, rules and regulations violated our conscience.

At all times, the parents offered to supply to the county prosecutor or county superintendent of schools the names, addresses, ages, test scores, and attendance records of their children to verify education.

The state is obligated to follow the least drastic means to assure its own interests and accomodate the faith of its citizens. At no time did the state show injury to any party. The sheriff testified under oath that no crime had been committed. Test scores (See appendices _F_) clearly show the students academically above national and state norms on California Achievement Tests.

Below is a list of the actual violent acts taken by the state of Nebraska against the people of Faith Baptist Church and myself which violated our Constitutional liberties and rights.

1. On September 13, 1981 Faith Baptist Church doors were padlocked and the people forced out of a prayer meeting.

2. On February 18, 1982, I was sentenced to four months of jail in the Cass County Jail.

3. On September 3, 1982, I was arrested from behind my pulpit in the Faith Baptist Church as I ministered to my congregation and students in the auditorium.

4. On October 18, 1982, over 100 praying members and visiting people were ejected physically by 18 armed officers and the church doors of the Faith Baptist Church once again were padlocked.

5. On November 29, 1982, I was arrested at the midnight hour while I and my wife were staying at a local motel in the Omaha area. This arrest was not legitimate and was proven so in the court room two days later when the judge released me.

6. I was arrested the fourth time on December 8, 1982, and served 53 days in the Cass County Jail.

7. On November 23, 1983, seven men, parents of students attending the Faith Christian School were jailed the day before Thanksgiving where they spent 93 days behind bars. Their wives fled the state with bench warrants for their arrests and 32 children taken with them. The teacher, Mrs. Tresa Schmidt also fled the state to prevent arrest. She was not allowed to return home until April 26, 1984 at which time the warrant was dropped.

8. On April 26, 1984, I voluntarily surrendered myself to the court at which time I was arrested and sentenced to eight months in jail and told I could not be released early unless I forced the families to put their children in state approved schools. The sentence also carried a prohibition against my writing any books or materials while in jail.

I have actively and continuously tried to negotiate this whole matter since 1977. We have met numerous times with different officials trying to find a solution. In December of 1983 such a solution and negotiation was reached. However, the Attorney General of the State of Nebraska adamantly refused his assistant to consumate the negotiated settlement.

How did all this happen? In the Nebraska statutes under 79-1701 the law states that every teacher in a private parochial or denominational school must be certified (See appendices _I_) however, in the statutes chapter 79-1703 there is an exception for those teachers who are teaching religion.

The problem was created when the judge refused to accept our own definition of our own religious faith. We believe that every subject that we teach is religious. For instance, two plus two equals four is religious because it is truth, and Jesus said I am The Truth or the Source of Truth. Therefore, if two plus two equals four is true, it came from Jesus thus making it religious. However, the court made a willful decision that there were certain truths which could no longer be considered religious. He the judge decided that Math, Science, Social Studies, and History and any other subject which he would call secular would come under the police power of the state. This brings to the forefront one of the major problems causing persecution over religious conscience. The government must not, cannot, and should not define what is acceptable religious practice for another person or any of its citizens.

If the court had only asked the questions, who is injured and what property is destroyed? Since there is no injury then whatever we believe as our religious faith would have been protected by the First Amendment and the Nebraska State Constitution, Article 1, Section 4.

It is very convenient for the IRS or the Labor Department or for the Education Department or some bureaucratic organization to say we are not persecuting religion because we define this as non-religious. It just so happens though that to thousands and millions of Americans the education of their children is a religious function.

This could be said about almost every act of tyranny being carried out against Christians. It must be understood that actual crime is not protected under our Constitution nor is it protected by the scriptures. Many people have said, well if you're going to allow anything to be religious then someone may kill babies in the name of religion. Well, of course, you and I know that over eighteen million have been killed and no one seems to care about that. However, we do have laws against murder. Anytime there is a common law crime meaning a murder, bodily injury, property damage, infringement on another person's rights, or the disruption of peace and tranquility in the community, all of those actions would be regulatable by the government and punishable by the court. However, in our case and in the case of Rev. Moon and the case of Bob Jones University and the case of literally thousands of churches and Christians across America this is not the case. They simply are not creating a problem.

Therefore, we would plead with this committee to introduce legislation which would prohibit any federal or state government or bureaucracy or agency from infringing on the right of any individual relating to religion as that individual would define his religious beliefs unless it is in the matter of commission of common law crime. We would also beseech this committee to include in that legislation some form of redress of grievance. We have literally spent a million dollars in the courts. Not one time have we ever had a favorable decision; not one time have we had a Writ of Habeas Corpus granted; not one time have we had any decision favorable from the courts. It is obvious that there is a conspiracy between the judges of the State of Nebraska even up to the Federal District level. There must be a removal of this cloak of immunity for judges. There must be a removal of a cloak of immunity from any official. There must be redress of grievance or there will be revolution.

the number of situations demanding a choice between the two is most restricted.[16] Those decisions, in a two-pronged analysis, have sought to divide state regulation of religious beliefs which are completely sacrosanct[17] from regulation of actions which are protected under a three-tiered compelling state interest test.[18] Under the compelling state interest test, an infringement of one's religious beliefs first must be found.[19] If such an infringement exists, the burden falls upon the state to provide a compelling state interest

for not allowing an exemption for those whose religion the regulation infringes.[20] Finally, the state must demonstrate that there are no less restrictive alternatives available to achieve its compelling state interest.[21] Only then will the state regulation be upheld. Consequently, the heavy burden resting upon the state when it seeks to justify an infringement of one's religious practices works to assure Americans that freedom of individual conscience in religious matters will be preserved.

That assurance, however, has been shaken by the recent Nebraska Supreme Court decision in *Douglas v. Faith Baptist Church*,[22] where the court bypassed an excellent opportunity to further solidify the "unalienable right"[23] of the individual to serve his God as his conscience demands. The case centered around a private religious school operated by the Faith Baptist Church of Louisville, Nebraska. From the school's inception in 1977,[24] defendants took the position that "the operation of the school is simply an extension of the ministry of the church, over which the State of Nebraska has no authority to approve or accredit."[25] As a result, defendants refused to comply with state education regulations.[26] More specifically, they refused to: (1) furnish a list of the

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[16] *See* note 133 & accompanying text *infra*.

[17] The United States Supreme Court has consistently held that government regulation of beliefs is absolutely prohibited. McDaniel v. Paty, 435 U.S. 618, 626 (1978); Cantwell v. Connecticut, 310 U.S. 296, 304 (1940); Reynolds v. United States, 98 U.S. 145, 166 (1878).

[18] Government regulation of actions is permitted to a limited extent. The test which separates the permissible regulation from the impermissible regulation has been referred to both as a "compelling interest" test, Thomas v. Review Bd., 450 U.S. 707 (1981); Wisconsin v. Yoder, 406 U.S. 205 (1972); Sherbert v. Verner, 374 U.S. 398 (1963), and as an "interests of the highest order" test, Thomas v. Review Bd., 450 U.S. 707 (1981); McDaniel v. Paty, 435 U.S. 618 (1978); Wisconsin v. Yoder, 406 U.S. 205 (1972). The Court appears to have made no cognizable distinction between the two.

The "interests of the highest order" test, as stated in *Yoder*, mirrors the compelling state interest test of *Thomas* and *Sherbert*. The former test requires that a state interest of "the highest order" and one "not otherwise served" must be found in order to overbalance a "legitimate" claim to the free exercise of religion. This test accurately restated the second, third, and first tiers respectively of the *Sherbert* free exercise test. Moreover, the *Sherbert* case is cited seven times in the *Yoder* opinion and the notes as support for the ruling handed down by the Court.

Nevertheless, a minority of lower courts found a distinction between the two tests by reading *Yoder* to set forth a more even-handed balancing test than the test employed in *Sherbert*. Marshall v. District of Columbia, 392 F. Supp. 1012 (D.D.C. 1975), *aff'd per curiam*, 559 F.2d 726 (D.C. Cir. 1977); Davis v. Page, 385 F. Supp. 395 (D.N.H. 1974). Some commentators agreed with these courts in urging a less rigorous test. Giannella, *Religious Liberty, Nonestablishment, and Doctrinal Development: Part I. The Religious Liberty Guarantee*, 80 HARV. L. REV. 1381 (1967); Shetreet, *Exemptions and Privileges on Grounds of Religion and Conscience*, 62 KY. L.J. 377 (1974); Note, *An Expansion of the Free Exercise Clause: Wisconsin v. Yoder*, 27 ALA. L. REV. 320 (1973). Other commentators, however, have stated that the test is and should be more rigorous. Casad, *Compulsory High School Attendance and the Old Order Amish: A Commentary on State v. Garber*, 16 KAN. L. REV. 423 (1968); Clark, *Guidelines for the Free Exercise Clause*, 83 HARV. L. REV. 327 (1969); Kurland, *The Supreme Court, Compulsory Education, and the First Amendment's Religion Clauses*, 75 W. VA. L. REV. 213 (1973); Marcus, *The Forum of Conscience: Applying Standards under the Free Exercise Clause*, 1973 DUKE L.J. 1217; Pfeffer, *The Supremacy of Free Exercise*, 61 GEO. L.J. 1115 (1973).

The Supreme Court apparently settled the controversy by its rejection of the bifurcation of the *Sherbert* and *Yoder* renditions of the test in Thomas v. Review Bd., 450 U.S. 707 (1981).

[19] Thomas v. Review Bd., 450 U.S. 707, 713-16 (1981); Wisconsin v. Yoder, 406 U.S. 205, 215-19 (1972); Sherbert v. Verner, 374 U.S. 398, 403-06 (1963).

[20] Thomas v. Review Bd., 450 U.S. 707, 718 (1981); Wisconsin v. Yoder, 406 U.S. 205, 221-22, 236 (1972); Sherbert v. Verner, 374 U.S. 398, 406-07 (1963). As the Court stated in *Yoder*: "[I]t was incumbent on the State to show with more particularity how its admittedly strong interest in compulsory education would be adversely affected by granting an exemption to the Amish." 406 U.S. at 236.

[21] Thomas v. Review Bd., 450 U.S. 707, 718 (1981); Wisconsin v. Yoder, 406 U.S. 205, 215 (1972); Sherbert v. Verner, 374 U.S. 398, 407 (1963).

[22] 207 Neb. 802, 301 N.W.2d 571, *cert. denied*, 102 S. Ct. 75 (1981).

[23] James Madison called this right an "unalienable right" in these now famous words: "The religion, then, of every man, must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is, in its nature, an unalienable right." A. STOKES & L. PFEFFER, CHURCH AND STATE IN THE UNITED STATES 38 (1964).

[24] 207 Neb. at 804, 301 N.W.2d at 572.

[25] *Id.* at 805, 301 N.W.2d at 574.

[26] NEB. REV. STAT. § 79-201 (Reissue 1976) requires children between the ages of 7 and 16 "to attend regularly the public, private, denominational, or parochial day schools each day that such schools are open and in session." NEB. REV. STAT. § 79-328 (Reissue 1976) gives the State Board of Education the power and duty to supervise the state school system, *id.* § 79-328(5); "establish . . . procedures for classifying, approving, and accrediting schools," *id.*; and publish "laws and regulations governing the schools." *Id.*

Pursuant to this power, the State Board of Education promulgated a rule which provided: "Only school systems approved . . . by the State Board of Education are considered to be providing a program of instruction which is in compliance with the compulsory attendance laws." Nebraska State Department of Education, Rule 14 (May 7, 1976). The Rule further specified curriculum requirements and the requirement that a professional staff member employed by a school must "hold a valid Nebraska certificate . . . issued by

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A. Infringement

The first tier of the free exercise test requires that those challenging the state regulation show that there was a governmental infringement of their religion.[44] Infringement occurs when one is forced to choose between the demands of his religion and the demands of his government.[45] Past compliance with a regulation, although a factor to be considered, should not necessarily induce a court to find a lack of infringement in later noncompliance.[46] The evils of continuing to require a choice from an individual are the samé whether the person chose to violate the state regulation to comply with the demands of his religion or whether that person chose to violate the demands of his religion to comply with the state regulation. A consistent practice of resisting state regulation, although bolstering the challenger's argument, is not and should not be a *sine qua non* for an infringement.[47]

On the other hand, a consistent practice of resisting state regulation is not, *per se*, a showing of infringement.[48] The issue which a court must determine is whether there is a sincerely held religious belief,[49] which conflicts with the demands prescribed in the regulatory scheme.[50]

In the area of state teacher certification requirements, there are several situations in which a free exercise infringement may arise, depending upon whose free exercise interests are considered.[51] Under *Yoder*, if there is a conflict between the parent's religious beliefs and a state regulation requiring that children be taught by certified teachers, the infringement tier of the free exercise test would be satisfied. For example, if a parent objects for religious reasons to the certification itself or to something a teacher must do to obtain certification, there would be an infringement.[52] The parent is faced with a choice of whether to obey the government and violate his religious principles or to obey his conscience and violate the state law.[53]

A more difficult problem is presented where there is no infringement of the parent's religious beliefs, but there is a conflict between the teacher's religious beliefs and the certification requirements. If there is an infringement of the teacher's free exercise of religion,[54] potentially creating the right to teach without certification, there would necessarily have to be a right accorded to the parents to have their children educated by a noncertified teacher. Otherwise the teacher would have no pupils to teach upon exercising his free exercise right. This situation could arise where the teacher has a direct religious reason for not obtaining certification, or where the teacher, because of a religious preference, chooses to attend a nonapproved higher educational institution and then after graduation, seeks to teach without meeting the certification requirements. In the latter situation, an indirect religious preference rather than a direct religious obstacle would *force* the individual to make a choice.[55]

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[44] *See* note 19 & accompanying text *supra*. The infringement requirement has frequently been interpreted to require coercion. Board of Educ. v. Allen, 392 U.S. 236 (1968); Abington School Dist. v. Schempp, 374 U.S. 203 (1963). Coercion will be present in the violation of a teacher certification requirement if the violation leads to the deprivation of an individual's right to life, liberty, or property. In any case where the possible consequence of disobeying the regulation is a fine, imprisonment, or the removal of children from the home, coercion is present.

[45] Sherbert v. Verner, 374 U.S. 398 (1963). The *Sherbert* Court stated: "The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship." *Id.* at 404. *Accord*, Thomas v. Review Bd., 450 U.S. 707 (1981).

[46] Past compliance may help to show a lack of infringement, however, it may also show the strength of the coercive effect of the law. That is, a person may have chosen to violate religious principles rather than face punishment under the law.

[47] To so require would judicially encourage persons to break the law in order to protect their constitutional rights.

[48] People may resist the state's educational regulations for reasons other than those which would lead to a constitutionally protected infringement. Wisconsin v. Yoder, 406 U.S. 205, 215-16 (1972); Brown v. Dade Christian Schools, Inc., 556 F.2d 310 (5th Cir. 1977), *cert. denied*, 434 U.S. 1063 (1978); Hanson v. Cushman, 490 F. Supp. 109 (W.D. Mich. 1980); *In re* Franz, 55 A.D.2d 424, 390 N.Y.S.2d 940 (1977); *In re* McMillan, 30 N.C. App. 235, 226 S.E.2d 693 (1976).

[49] "Only beliefs rooted in religion are protected by the Free Exercise Clause." Thomas v. Review Bd., 450 U.S. 707, 713 (1981). The test for determining what beliefs should be protected was set forth in United States v. Ballard, 322 U.S. 78 (1944), and referred to by the *Yoder* Court. 406 U.S. 205, 215 n.6 (1972). The *Ballard* Court held that although the truth of the individual's belief could not be questioned, its sincerity could, and, if the belief was sincerely held, it was protected.

[50] *For* an example of the application of the test under a challenge to a compulsory education law, see Wisconsin v. Yoder, 406 U.S. 205, 215-19 (1972).

[51] The courts which have addressed teacher certification requirements have generally considered the parent's free exercise interest, because they were the ones in violation of the laws by not sending their children to be taught at schools employing certified teachers. Kentucky State Bd. of Elementary & Secondary Educ. v. Rudasill, 589 S.W.2d 877 (Ky. 1979), *cert. denied*, 446 U.S. 938 (1980); Douglas v. Faith Baptist Church, 207 Neb. 802, 301 N.W.2d 571, *cert. denied*, 102 S. Ct. 75 (1981); State v. Shaver, 294 N.W.2d 883 (N.D. 1980). In any particular case, the court should consider the interest of the one before it. However, if the state proceeds against the school generally, then perhaps either or both the interests of parent and teacher would be involved.

[52] The role of the parent in the education of the child is firmly entrenched within our society. The *Yoder* Court stated: "This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." 406 U.S. 205, 232 (1972). Thus the right of a parent to direct his children's education should not be contingent on a particular form of government approval, *e.g.*, a teaching certificate. This may be analogized to Stevens v. Berger, 428 F. Supp. 896 (E.D.N.Y. 1977) where the court struck down a law which conditioned the receipt of welfare benefits upon the applicant's obtaining a social security number. The plaintiffs objected to obtaining the numbers because of religious reasons.

[53] Coercion will be present in this choice if any sanctions are available for the state to use against the parent.

[54] To satisfy the infringement requirement, a coercive choice is all that is required. If the result of the requirement would put a noncertified teacher out of a job, the infringement test should be satisfied.

Another type of indirect conflict is presented where a parent who does not object to state certification requirements nevertheless places his children with a teacher lacking certification simply because no teacher possessing a certificate and satisfying the parent's personal religious beliefs was available. In this situation, although the conflict with the state certification requirement is indirect, it should be sufficient to give rise to an infringement.[56]

B. Compelling State Interest

When attempting to determine the constitutionality of a state education regulation which is challenged by an individual on free exercise grounds, the finding of an infringement only begins the analytical process. The burden of proof then shifts to the state to show a compelling state interest in sustaining the regulation as applied to the particular individual.[57] Accordingly, in a challenge to teacher certification requirements, the state must present a compelling reason for not allowing an exemption from the requirements of the regulation for this particular individual.[58] Since the

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[55] Whether an infringement would be found in this situation would depend upon the particular facts involved. If the teacher had only to apply to be certified, generally no infringement could be shown. On the other hand, if graduation from an approved college were required to obtain certification, infringement might be shown in the prospective teacher's forced choice of attending an approved college in order to be certified or forgoing his opportunity to teach and attending the college which he, *for religious reasons*, wishes to attend.

[56] *See* Sherbert v. Verner, 374 U.S. 398 (1963). The *Sherbert* Court stated: "For '[i]f the purpose or effect of a law is to impede the observance of one or all religions or is to discriminate invidiously between religions, that law is constitutionally invalid even though the burden may be characterized as being only indirect.'" *Id.* at 404 (citation omitted). *Accord*, Thomas v. Review Bd., 450 U.S. 707 (1981). This situation is different than the situation in note 54, *supra*, in that here there is no issue involving infringement as to the teacher.

[57] *See* note 39 & accompanying text *supra*. Wisconsin v. Yoder, 406 U.S. 205, 219-29 (1972) illustrates the difficulty the state has in sustaining its burden in this area.

[58] The state's burden is always one of showing an interest in not allowing an

state's interest in compelling teacher certification stems foundationally from and is limited analytically by the state's interest in compulsory education,[59] an examination of the state's interest in compelling education is necessary.[60]

Under both our democratic political system and our free enterprise economic system, education is imperative in order to achieve the effective and intelligent participation of individuals necessary to propel the systems.[61] Accordingly, the state generally would

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exemption. Thomas v. Review Bd., 450 U.S. 707 (1981); Wisconsin v. Yoder, 406 U.S. 205 (1972); Sherbert v. Verner, 374 U.S. 398 (1963); Braunfeld v. Brown, 366 U.S. 599 (1961). Protecting the establishment clause principle by not granting exemptions to general nondiscriminatory legislation is not a compelling state interest. Thomas v. Review Bd., 450 U.S. 707 (1981); McDaniel v. Paty, 435 U.S. 618 (1978); Sherbert v. Verner, 374 U.S. 398 (1963). Nor is the state's interest in the overall subject matter under consideration a compelling state interest. If that were true, the *Sherbert*, *Yoder*, and *Thomas* cases would have been decided differently since in each case the state had a compelling interest in the general subject matter.

[59] Except for government standards relating to the health and safety of children, most government regulations of private schools stem from the state's interest in compelling education. Thus the state must have a compelling interest in the underlying education to justify a particular requirement, such as teacher certification. The state would probably lack the requisite level of interest to require certification of teachers who instruct in subjects not associated with the state's genuine educational interest. For example, the state does not and probably could not require all Sunday school teachers, pastors, priests, nuns, or other religious instructors to obtain a license from the state before being permitted to teach. Since the state does not have a compelling interest in religious education, it does not have a compelling interest in certifying teachers to teach religious matters. Moreover, the state, hopefully, could not require that all parents receive licenses to teach before permitting them to teach their children. This is because the state's interest in the regulation of education within the family is not sufficient to justify such a regulation.

[60] *For a general history of compulsory educational requirements, see* Rothbard, *Historical Origins*, in THE TWELVE-YEAR SENTENCE 11 (W. Rickenbacker ed. 1974). Court cases since *Yoder* involving challenges to compulsory education include: Hanson v. Cushman, 490 F. Supp. 109 (W.D. Mich. 1980); Scoma v. Chicago Bd. of Educ., 391 F. Supp. 452 (N.D. Ill. 1974); Hill v. State, 381 So. 2d 91 (Ala. Crim. App. 1979); People v. Serna, 71 Cal. App. 3d 229, 139 Cal. Rptr. 426 (1977); Kentucky State Bd. for Elementary & Secondary Educ. v. Rudasill, 589 S.W.2d 877 (Ky. 1979), *cert. denied*, 446 U.S. 938 (1980); Douglas v. Faith Baptist Church, 207 Neb. 802, 301 N.W.2d 571, *cert. denied*, 102 S. Ct. 75 (1981); *In re* Franz, 55 A.D.2d 424, 390 N.Y.S.2d 940 (1977); *In re* R., 79 Misc. 2d 339, 357 N.Y.S.2d 1001 (Fam. Ct. 1974); *In re* McMillan, 30 N.C. App. 235, 226 S.E.2d 693 (1976); State v. Shaver, 294 N.W.2d 883 (N.D. 1980); State v. Whisner, 47 Ohio St. 2d 181, 351 N.E.2d 750 (1976); State v. LaBarge, 134 Vt. 276, 357 A.2d 121 (1976); State v. Kasuboski, 87 Wis. 2d 407, 275 N.W.2d 101 (1978).

[61] Decision-making, necessary in a free society, may only be properly made when adequate knowledge of the available facts is obtained. A lack of knowledge translates directly into bad decisions and consistent bad decisions lead to one's demise, whether politically or economically. Consequently, unlike a

have a compelling interest in preparing its "citizens to participate effectively and intelligently in our open political system"[62] and in preparing "individuals to be self-reliant and self-sufficient participants in society."[63] The Supreme Court, in recognizing this interest, has correctly stated: "[T]here is no doubt as to the power of a State, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education."[64] The state has a high "duty to protect children from ignorance."[65]

The state's interest, however, applies only to "basic" education[66] and does not include such things as social interaction[67] or educational equality.[68] Moreover, the state's interest does not extend into areas of education which are religious in character.[69] Rather the state's compelling interest in education extends only to those areas necessary to adequately assure effective participation in society.[70]

What is necessary to assure an individual's effective participation in society may vary according to the type of society in which the individual lives.[71] Thus when the state argues a compelling state interest in a general compulsory educational scheme, it must demonstrate a compelling state interest in not allowing an exemption to that scheme for those who live by guidelines different than the majority of society.[72] Typically, the state's interest in the overall scheme will be identical to its interest in having the scheme applied to a particular individual.[73]

It is important to note that the state's compelling interest is in education, not in the regulation of education.[74] Regulations are the *methods* by which the state achieves its compelling state interest. It is possible for the state's compelling interest in education to be fulfilled without compliance with the state's regulations governing education.[75]

To effectively protect their legitimate interests in basic educa-

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society in which one simply does as told, in our society, education for all is of imperative importance. The *Yoder* Court, accordingly, stated that the state has "a high responsibility," "a paramount responsibility," and "a strong interest" in the area of education. 406 U.S. at 213, 236.

[62] Wisconsin v. Yoder, 406 U.S. 205, 221 (1972).

[63] *Id.*

[64] *Id.* at 213 (emphasis added). *See also* Wolman v. Walter, 433 U.S. 229 (1977); Board of Educ. v. Allen, 392 U.S. 236 (1968).

[65] Wisconsin v. Yoder, 406 U.S. 205, 222 (1972).

[66] *See* note 64 & accompanying text *supra*. The *Yoder* Court stated in discussing a Wisconsin statute requiring school attendance until age 16:

> Insofar as the State's claim rests on the view that a brief additional period of formal education is imperative to enable the Amish to participate effectively and intelligently in our democratic process, it must fall. . . . When Thomas Jefferson emphasized the need for education as a bulwark of a free people against tyranny, there is nothing to indicate he had in mind compulsory education through any fixed age beyond a basic education.

406 U.S. 205, 225 (1972).

[67] *See generally* Wisconsin v. Yoder, 406 U.S. 205 (1972). The Amish plaintiffs maintained a very separated existence and yet the Court stated: "Even their idiosyncratic separateness exemplifies the diversity we profess to admire and encourage." *Id.* at 226.

[68] The Supreme Court has never held or suggested that one must limit his education to that which others receive in order to achieve educational equality. Educational equal opportunities are necessary for state-controlled schools. Brown v. Board of Educ., 347 U.S. 483 (1954). But for schools not directly controlled by the state, it is quality and not equality which is the basis of the state's interest. Quality relates to the concept of a "basic" education which is the limit of the state's compelling interest. *See* note 66 *supra*.

[69] Epperson v. Arkansas, 393 U.S. 97 (1968); Abington School Dist. v. Schempp, 374 U.S. 203 (1963); Engel v. Vitale, 370 U.S. 421 (1962); McCollum v. Board of Educ., 333 U.S. 203 (1948).

[70] *See* note 66 *supra*.

[71] As the *Yoder* Court noted: "It is one thing to say that compulsory education for a year or two beyond the eighth grade may be necessary when its goal is the preparation of the child for life in modern society as the majority live, but it is quite another if the goal of education be viewed as the preparation of the child for life in the separated agrarian community that is the keystone of the Amish faith." Wisconsin v. Yoder, 406 U.S. 205, 222 (1972).

[72] The compelling state interest must be in not allowing an exemption. *See* notes 20 & 38 *supra*.

[72] The state's interest in an overall educated society is to insure effective participation in our economic and political systems. The state's interest in the education of each individual is to insure his or her effective participation in our economic and political systems. These interests, therefore, often merge. Nevertheless, where the individual can show that his circumstances are different enough that the two interests do not merge, as the Amish did in *Yoder*, it becomes "incumbent on the State to show with more particularity how its admittedly strong interest in compulsory education would be adversely affected by granting an exemption." Wisconsin v. Yoder, 406 U.S. 205, 236 (1972).

[74] The distinction between the state's interest and the regulation of that interest often is not made by the courts. *See* Douglas v. Faith Baptist Church, 207 Neb. 802, 301 N.W.2d 571, *cert. denied*, 102 S. Ct. 75 (1981); State v. Shaver, 294 N.W.2d 883 (N.D. 1980). When the state's interest in regulating education conflicts with the free exercise of an individual's religion, the state's interest only extends to a regulation which both serves the state's compelling interest and interferes the least with the individual's religion. Thomas v. Review Bd., 450 U.S. 707 (1981); Wisconsin v. Yoder, 406 U.S. 205 (1972); Sherbert v. Verner, 374 U.S. 398 (1963); Braunfeld v. Brown, 366 U.S. 599 (1961).

[75] Legally, the least drastic alternative aspect of the free exercise test is based upon the assumption that the state's interest may be met under methods other than the regulations under consideration. At least three state courts have expressly found that the education being provided under systems which did not comply with state regulations was equal or superior to the education provided in "approved" systems. State v. Massa, 95 N.J. Super. 382, 231 A.2d 252 (Morris County Ct. 1967); State v. Shaver, 294 N.W.2d 883 (N.D. 1980); State v. LaBarge, 134 Vt. 276, 357 A.2d 121 (1976). Thus if the approved systems met the compelling interest of the state in education, the assumption

tion,[76] the states have employed a multiplicity of regulations,[77] including the requirement that persons who dispense state-mandated education be certified by the state.[78] Such regulations, however, may prove to be unenforceable when challenged by an individual who has demonstrated an infringement of his religion.[79] Because of the relationship between teacher certification requirements and compulsory education,[80] the state may only justify denying an exemption from the certification requirements if such a refusal would promote the legitimate educational interests of the state.[81] Noneducational interests, such as administrative inconvenience are inadequate to justify denying an exemption.[82]

Therefore, the essence of the entire free exercise evaluation is that the state must relate each denial of an exemption from state certification requirements to the educational interests affected directly by the noncertified teacher.[83] If the state is able to show that the noncertified teacher is unable to or for another reason will

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would be that the systems which did not comply with state regulations also met the compelling interest of the state in educating its citizens.

[76] *See* notes 61-73 & accompanying text *supra*.

[77] For an example, see State v. Whisner, 47 Ohio St. 2d 181, 351 N.E.2d 750 (1976).

[78] Four recent cases which addressed the teacher certification issue are Kentucky State Bd. of Elementary & Secondary Educ. v. Rudasill, 589 S.W.2d 877 (Ky. 1979), *cert. denied*, 446 U.S. 938 (1980); Douglas v. Faith Baptist Church, 207 Neb. 802, 301 N.W.2d 571, *cert. denied*, 102 S. Ct. 75 (1981); State v. Massa, 95 N.J. Super. 382, 231 A.2d 252 (Morris County Ct. 1967); State v. Shaver, 294 N.W.2d 883 (N.D. 1980).

[79] This stems from the fact that the state has the burden of proof in this area. Sherbert v. Verner, 374 U.S. 398 (1963). *For an argument in favor of inferring unenforceability, see* Clark, *supra* note 16, at 348.

[80] *See* note 39 & accompanying text *supra*.

[81] *See* notes 39-73 & accompanying text *supra*.

[82] Administrative inconvenience has long been deemed an impermissible justification for invading one's free exercise rights. The regulations in Wisconsin v. Yoder, 406 U.S. 205 (1972), Sherbert v. Verner, 374 U.S. 398 (1963), and Cantwell v. Connecticut, 310 U.S. 296 (1940) were each struck down even though the exemptions required would cause some administrative problems. Only if the inconvenience were so great as to render the entire educational scheme unworkable would it be a sufficient justification. The *Sherbert* Court, considering the decision in Braunfeld v. Brown, 366 U.S. 599 (1961), in relation to its own set of facts, stated:

> Requiring exemptions for Sabbatarians, while theoretically possible, appeared to present an administrative problem of such magnitude, or to afford the exempted class so great a competitive advantage, that *such a requirement would have rendered the entire statutory scheme unworkable*. In the present case no such justifications underlie the determination of the state court that appellant's religion makes her ineligible to receive benefits.

Sherbert v. Verner, 374 U.S. 398, 408-09 (1963) (emphasis added) (footnotes omitted).

[83] The state may claim that granting exemptions might lead indirectly to the decline in the quality of education by the proliferation of spurious claims.

not dispense the education necessary to meet the state's compelling interest, the state should have sufficient justification for denying an exemption.[84] That is, if the state demonstrates that a teacher did not understand the subjects being taught sufficiently to be able to teach others or could not communicate the subjects effectively to his students, the state would sustain its burden of proof as to that teacher.[85] However, the state cannot sustain its burden of proof simply by showing that the teacher was not certified;[86] the state must show a direct adverse effect on its educa-

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However, a similar argument was rejected in Sherbert v. Verner, 374 U.S. 398, 407 (1963), in the context of unemployment compensation benefits.

[84] An argument may be presented that teacher certification laws are invalid *per se* when subjected to a free exercise analysis and an infringement is shown to exist. Essentially, the argument is that although the state has a compelling interest in education, teacher certification laws simply are not the least drastic alternative means of achieving that compelling interest. If this analysis is followed, a careful scrutiny of the teaching ability of the teacher involved would be unnecessary. If this analysis is rejected, a careful scrutiny is mandatory. *See* State v. Shaver, 294 N.W.2d 883 (N.D. 1980) in which the court apparently viewed teacher certification laws as less drastic than standardized tests. *But see* Kentucky State Bd. of Elementary & Secondary Educ. v. Rudasill, 589 S.W.2d 877 (Ky. 1979), *cert. denied*, 446 U.S. 938 (1980) in which the court viewed standardized tests as less drastic than teacher certification requirements under a state constitutional provision.

Chief Justice Krivosha of the Nebraska Supreme Court wrote in dissenting in Douglas v. Faith Baptist Church:

> I find nothing either in our statutes or in logic which compels a conclusion that one may not teach in a private school without a baccalaureate degree if the children are to be properly educated. Under our holding today, Eric Hoffer could not teach philosophy in a grade school, public or private, and Thomas Edison could not teach the theories of electricity. While neither of them could teach in the primary or secondary grades, both of them could teach in college. I have some difficulty with a law which results in requiring that those who teach must have a baccalaureate degree, but those who teach those who teach need not. The logic of it escapes me. The experience of time has failed to establish that requiring all teachers to earn a baccalaureate degree from anywhere results in providing children with a better education.

207 Neb. 802, 822-24, 301 N.W.2d 571, 582-83 (1981) (Krivosha, C.J., dissenting). However, it is unclear whether the Chief Justice simply objected to the baccalaureate requirement or whether he objected to the requirement of a certificate.

[85] The burden upon the state is to show a compelling interest in not allowing an exemption. *See* notes 29, 56 & accompanying text *supra*. In this case the state would have a compelling interest in not allowing the exemption because allowing the exemption would in effect deny the state its constitutional right to achieve its compelling interest in education. *See* Wisconsin v. Yoder, 406 U.S. 205 (1972); Sherbert v. Verner, 374 U.S. 398 (1963); Braunfeld v. Brown, 366 U.S. 599 (1961).

[86] Failure to meet state regulatory requirements does not translate directly into failure to meet the state's compelling interest in the underlying subject. If the state's compelling interest in the underlying subject is met, the state has

tional interests. Consequently, as long as children are receiving an education equivalent to that received in approved schools,[87] the state lacks a compelling interest in requiring teacher certification.[88]

C. Availability of Less Restrictive Alternatives

The third tier of the free exercise test would be reached only after the state has shown that a noncertified teacher failed to dispense to the students that which would satisfy the state's compelling educational interest.[89] The state must then show that there are no less restrictive alternatives available than the teacher certification requirement to protect its compelling interest in education. The state probably would be able to sustain its burden of proof in this area,[90] as long as unnecessary requirements for obtaining a certificate were not imposed.[91]

Consequently, teacher certification requirements under a free exercise of religion challenge should be sustained only when either (1) no legitimate infringement exists[92] or (2) an infringement exists, but the state has shown that its compelling educational interests are not being met by the instruction given by the noncertified teacher and there are no unnecessary requirements to obtaining a certificate.[93] In all other situations, the freedom of conscience in religious matters should be protected.[94]

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no further interest in enforcing additional regulations. *See* notes 74-75 & accompanying text *supra*.

[87] *See* note 75 *supra*.

[88] Teacher certification laws should only be valid as they relate to the state's interest in education. *See* note 50 *supra*.

[89] *See* note 21 & accompanying text *supra*.

[90] The state could argue that it can only protect its compelling interest in education by preventing a specific teacher from teaching and that the method of requiring certification is no more restrictive on the teacher's or parent's right than any other method by which the state could obtain its interest. Braunfeld v. Brown, 366 U.S. 599 (1961).

[91] The imposition of *unnecessary* requirements by definition removes the teacher certification requirement from the least restrictive alternative sphere. That removal is fatal for the constitutional survival of the certification requirement under a free exercise challenge. However, it is unclear whether an alternative requirement, such as a standardized test or a degree from an approved school, would meet the least restrictive alternative test in court. *See* note 84 *supra*.

[92] *See* notes 44-56 & accompanying text *supra*.

[93] *See* notes 57-81 & accompanying text *supra*.

[94] *See* notes 1-16 & accompanying text *supra*.

III. *DOUGLAS V. FAITH BAPTIST CHURCH*[95] ANALYZED

In resolving the defendants' free exercise challenge to the Nebraska education regulations, the Nebraska Supreme Court apparently chose to follow the rationale of one of its previous decisions[96] rather than the United States Supreme Court decisions in the area. The court upheld the closing of the Faith Baptist Church's school simply because that school had failed to comply with the state's regulatory scheme.[97] There was no evidence that the school was failing to provide a quality education.[98] This was not a case in which the state's interest in education conflicted with the parents' free exercise interest in "non-education,"[99] but rather one in which the state's interest in regulating education conflicted with the parents' religious beliefs. By affirming, the court in effect allowed the state's interest in regulation to override the parents' fundamental free exercise interest[100] in directing the education of their children.

The court began its first amendment analysis by examining *Meyerkorth v. State*,[101] a decision it had rendered in 1962 upon a similar set of facts. In that case, the parents sought to enjoin the county attorney from bringing suit to close their unapproved school.[102] Relying on *Meyer v. Nebraska*[103] and *Pierce v. Society of Sisters*,[104] the court held that the state could reasonably regulate education and that the regulations in question were not unreasonable; therefore, it denied injunctive relief.[105] *Meyer* and *Pierce*, although not compelling the ultimate result in *Meyerkorth*, did not explicitly forbid it.[106] Thus at the time it was decided, *Meyerkorth* may have been legally supportable.

Since the *Meyerkorth* decision, however, the United States

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[95] 207 Neb. 802, 301 N.W.2d 571, *cert. denied*, 102 S. Ct. 75 (1981).

[96] Meyerkorth v. State, 173 Neb. 889, 113 N.W.2d 565 (1962).

[97] The court held that the refusal to comply was "arbitrary and unreasonable." 207 Neb. at 817, 301 N.W.2d at 580.

[98] The only evidence set forth in the court's opinion on this point was that the students "were accomplishing the average amount of progress that most students probably were in Nebraska schools." *Id.* at 807, 301 N.W.2d at 574-75.

[99] There was no indication in the opinion that the parents were objecting to education *per se*.

[100] Wisconsin v. Yoder, 406 U.S. 205 (1972).

[101] 173 Neb. 889, 113 N.W.2d 565 (1962).

[102] *Id.*

[103] 262 U.S. 390 (1923).

[104] 268 U.S. 510 (1925).

[105] 173 Neb. 889, 113 N.W.2d 565 (1962).

[106] Neither Meyer v. Nebraska, 262 U.S. 390, 402 (1923), nor Pierce v. Society of Sisters, 268 U.S. 510, 534 (1925), involved the issue of whether reasonable regulations were constitutionally permissible in the light of a free exercise challenge, but each seemed to indicate that they might be.

Supreme Court announced two important decisions relating to the free exercise clause. In 1963, the Court very clearly set forth a three-tiered compelling state interest test in *Sherbert v. Verner*.[107] Nine years later in *Wisconsin v. Yoder*,[108] the Court applied the *Sherbert* test to a compulsory education requirement challenged by Amish parents. By the time the *Faith Baptist Church* case was presented to the Nebraska court, the reasonable regulation test, if ever the proper test, had been outdated for eighteen years and the compelling state interest test had become the law of the land.[109] Although the *Sherbert* case has been cited approvingly in three United States Supreme Court free exercise cases decided after it,[110] the Nebraska Supreme Court majority did not even mention the decision in its opinion in *Faith Baptist Church*. Instead, it interpreted *Yoder* as only giving lip service to the compelling interest test[111] and then in turn, presented its verbal dues to the compelling interest test and apparently applied the same standard applied earlier in *Meyerkorth*.[112] The "arbitrary, unreasonable, or unconstitutional"[113] language of the *Meyerkorth* decision subsequently became the "legitimate, reasonable, and compelling"[114] language of the *Faith Baptist Church* decision. This effectively allowed the court to give judicial blessing to the state's action in seeking the closure of a religious educational institution. In order to reach this result, the court relied heavily upon certain language from the *Yoder* opinion.

Initially, the court stated: "[T]he *Yoder* court did recognize the principle upon which our decision in *Meyerkorth* was based. 'There is no doubt as to the power of a State, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education.'"[115] Standing alone, the latter statement could lend support to the *Meyerkorth* result that reasonable regulations may override free exercise

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[107] 374 U.S. 398 (1963).

[108] 406 U.S. 205 (1972).

[109] For a summary of the applicable standard under the free exercise clause, see Marcus, *supra* note 18.

[110] Thomas v. Review Bd., 450 U.S. 707 (1981) (*Sherbert* is mentioned 13 times with approval in the majority opinion); McDaniel v. Paty, 435 U.S. 618 (1978) (*Sherbert* is cited once with approval in the plurality opinion, twice in the concurrence of Justice Brennan); Wisconsin v. Yoder, 406 U.S. 205 (1972) (*Sherbert* is cited seven times with approval in the majority opinion).

[111] *See* note 122 & accompanying text *infra*.

[112] *See* note 144 & accompanying text *infra*.

[113] Meyerkorth v. State, 173 Neb. 889, 904, 115 N.W.2d 585, 593 (1962).

[114] 207 Neb. at 817, 301 N.W.2d at 580.

[115] *Id.* at 811, 301 N.W.2d at 577 (quoting Wisconsin v. Yoder, 406 U.S. 205, 213 (1972)).

claims in the area of education. However, as quoted by the Nebraska court, the *Yoder* opinion continued:

> It follows that in order for Wisconsin to compel school attendance beyond the eighth grade against a claim that such attendance interferes with the practice of a legitimate religious belief, it must appear either that the State does not deny the free exercise of religious belief by its requirement, or that there is a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause.[116]

When considered together, these two passages from *Yoder* reveal that the state generally may "impose reasonable regulations for the control and duration of basic education,"[117] but those regulations will become constitutionally suspect if a free exercise claim is raised.[118] This interpretation is further supported by several later portions of the *Yoder* opinion. *First*, the Court stated: "A way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation of education if it is based on purely secular considerations; to have the protection of the Religion Clauses, the claims must be rooted in religious belief."[119] This language compels the conclusion that the free exercise clause *may be interposed* as a barrier to reasonable state regulation. In another passage the *Yoder* Court stated:

> We turn, then, to the State's broader contention that its interest in its system of compulsory education is so compelling that even the established religious practices of the Amish must give way. Where fundamental claims of religious freedom are at stake, however, we cannot accept such a sweeping claim; despite its admitted validity in the generality of cases, we must searchingly examine the interests that the State seeks to promote by its requirement for compulsory education to age 16, and the impediment to those objectives that would flow from recognizing the claimed Amish exemption.[120]

Significantly, the Court cited *Sherbert* as the source for the above test. A final statement by the *Yoder* Court conclusively establishes that the proper test is not the "reasonable regulation" test employed in *Meyerkorth*:

> However read, the Court's holding in *Pierce* stands as a charter of the rights of parents to direct the religious upbringing of their children. And, when the interests of parenthood are combined with a free exercise claim of the nature revealed by this record, more than merely a "reasonable relation to some purpose within the competency of the State" is required to sustain the validity of the State's requirement under the First Amendment.[121]

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[116] *Id.* at 811-12, 301 N.W.2d at 577 (quoting Wisconsin v. Yoder, 406 U.S. 205, 214 (1972)).

[117] Wisconsin v. Yoder, 406 U.S. 205, 213 (1972).

[118] *Id.* at 213-14, 222.

[119] *Id.* at 215.

[120] *Id.* at 221.

[121] *Id.*, at 233.

Since something higher than a mere reasonable relationship is needed to sustain a regulation challenged under the free exercise clause, the *Meyerkorth* decision is without precedential value because it was based upon the wrong test. However, the Nebraska court, in *Faith Baptist Church*, characterized *Yoder* as follows:

> The majority opinion in *Yoder*, then, although employing a "compelling interest" rule, nevertheless was greatly, if not completely, influenced by the process of balancing. . . . It is somewhat difficult to develop a generalized rule from the court's specific holding. The concurring opinion of Mr. Justice White, with whom, however, Mr. Justice Brennan and Mr. Justice Stewart joined, is more illuminating of the rule in its general application.[122]

Unless the Nebraska court was referring to a balancing test heavily weighted in favor of the individuals' free exercise rights, its analysis of *Yoder* is incorrect. There was nothing in the *Yoder* opinion which suggested that the Court did not apply the weighted balancing test required under *Sherbert*.[123] In fact, it would have been somewhat incongruous had the Court not applied the weighted balancing test since it stated early in the opinion: "The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion."[124] Further, language in *Yoder* suggests the Court employed the weighted test:

> It is one thing to say that compulsory education for a year or two beyond the eighth grade may be necessary when its goal is the preparation of the child for life in modern society as the majority live, but it is quite another if the goal of education be viewed as the preparation of the child for life in the separated agrarian community that is the keystone of the Amish faith.[125]

The Nebraska Supreme Court interpreted this language to support the application of an even-handed balancing test. However, the language suggests quite strongly that the state's interest in free exercise cases must equate to the "necessary" level, and that any lesser level of interest simply is not strong enough to justify an infringement of one's free exercise rights.[126]

Additionally, the Nebraska court's reliance upon the concurring opinion of Justice White as the correct statement of the test[127] employed in *Yoder* was misplaced. The *Yoder* majority and Justice

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[122] 207 Neb. at 613, 301 N.W.2d at 578.

[123] For a summary of the test set forth in *Yoder* and its relation to the *Sherbert* test, see note 18 *supra*.

[124] Wisconsin v. Yoder, 406 U.S. 205, 215 (1972).

[125] *Id.* at 222 (emphasis added).

[126] This interpretation is in accord with the *Sherbert* analysis. Sherbert v. Verner, 374 U.S. 398 (1963).

[127] 207 Neb. at 613, 301 N.W.2d at 578.

White did not apply the same test; therefore, Justice White's statement of the test was not an accurate reflection of the appropriate test.[128] The test applied by the majority was a weighted balancing test with the weight heavily in favor of the individual.[129] In contrast, Justice White apparently applied a nonweighted balancing test.[130] Much as the Nebraska court may have been attracted to Justice White's test, its duty lay in applying the test of the majority.

A third objection to the Nebraska court's analysis of *Yoder* stems from its statement: "It is somewhat difficult to develop a generalized rule from the court's specific holding."[131] The court apparently was attempting to interpret *Yoder* independently of *Sherbert* instead of reading the two decisions *in pari materia*. The generalized rule sought by the Nebraska court has been in the process of being synthesized since the *Reynolds v. United States*[132]

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[128] Even assuming, for the sake of argument, that both the majority and concurring opinions employed the same test, there still would be no certainty that both framed the tests in the same words, and a shift in words may change the outcome of the test in particular circumstances.

[129] *See* notes 123-26 & accompanying text *supra*.

[130] Justice White stated:

> Cases such as this one inevitably call for a delicate balancing of important but conflicting interests. I join the opinion and judgment of the Court because I cannot say that the State's interest in requiring two more years of compulsory education in the ninth and tenth grades outweighs the importance of the concededly sincere Amish religious practice to the survival of that sect.

Wisconsin v. Yoder, 406 U.S. 205, 237-38 (1972) (White, J., concurring).

[131] 207 Neb. at 613, 301 N.W.2d at 578.

[132] 98 U.S. 145 (1878). In *Reynolds*, the Court stated that religious actions could be governed but did not lay down an even-balanced test to determine when they could be governed. A test was suggested in Cantwell v. Connecticut, 310 U.S. 296, 304 (1940) (emphasis added), in which the Court stated: "In every case the power to regulate must be so exercised as not, in attaining a permissible end, *unduly* to infringe the protected freedom." Even at this early time, the balance appeared to be tilted in favor of the "protected freedom." While the test *applied* in Minersville School Dist. v. Gobitis, 310 U.S. 586 (1940), may have *approximated* Justice White's test, that type of analysis was rejected in Murdock v. Pennsylvania, 319 U.S. 105 (1943), and the express holding of *Gobitis* was overruled in West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943). The *Murdock* Court stated:

> The fact that the ordinance is "nondiscriminatory" is immaterial. The protection afforded by the First Amendment is not so restricted. A license tax certainly does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with the wares and merchandise of hucksters and peddlers and treats them all alike. Such equality in treatment does not save the ordinance. Freedom of press, freedom of speech, freedom of religion are in a preferred position.

319 U.S. at 115. In Prince v. Massachusetts, 321 U.S. 158, 167 (1944) (emphasis added), the Court stated: "[T]he state has a wide range of power for limiting

decision in 1878. Nowhere in that process has the test in Justice White's concurrence been employed in free exercise cases.

The Nebraska Supreme Court's reliance on *Application of Urie*[133] as support for its holding[134] further demonstrates the court's failure to place the free exercise rights of the petitioners in a "preferred position."[135] In that case, a plaintiff who had graduated from an unaccredited law school in California applied for admission to the Alaska bar.[136] The Alaska court, in upholding the rejection of plaintiff's application, explained the test employed in reaching its decision as follows:

> Since Alaska's equal protection analysis is more demanding than the federal "rational basis" test, there is, *a fortiori*, no violation of federal equal protection guarantees. We need not consider whether the Alaska bar rule meets the more demanding federal requirement of a "compelling state interest" because that standard is only applicable if the complainant is a member of a suspect class or the procedure at issue violates a fundamental right. Neither is the case here.[137]

In relying on the *Urie* decision to directly support its holding in *Faith Baptist Church*, the Nebraska court more clearly revealed that it was not applying a compelling state interest test but rather an even-handed balancing test.[138] The test employed in *Urie* was an inappropriate one to use in resolving the *Faith Baptist Church* issues because *Urie* did not involve a fundamental right.[139]

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parental freedom and authority in things affecting the child's welfare; and . . . this includes, *to some extent*, matters of conscience and religious conviction." Again, religious freedom was placed in an exalted position in relation to other interests. Moreover, that Court strictly confined the *Prince* holding to the facts before it. *Id.* at 171. *See also* Wisconsin v. Yoder, 406 U.S. 205, 229-30 (1972).

Braunfeld v. Brown, 366 U.S. 599, 607 (1961), although sustaining the state regulation, placed the "least restrictive alternative" burden on the state. Following *Braunfeld* was Sherbert v. Verner, 374 U.S. 398 (1963), which was cited as the authority for the proper test in Wisconsin v. Yoder, 406 U.S. 205 (1972), McDaniel v. Paty, 435 U.S. 618 (1978), and Thomas v. Review Bd., 450 U.S. 707 (1981). Although the *Sherbert* Court first stated the full test, the *Thomas* Court most succinctly stated the test as follows: "The state may justify an inroad on religious liberty by showing that it is the least restrictive means of achieving some compelling state interest." 450 U.S. at 718.

[133] 617 P.2d 505 (Alaska 1980).

[134] 207 Neb. at 816, 301 N.W.2d at 579.

[135] "Freedom of press, freedom of speech, freedom of religion are in a preferred position." Murdock v. Pennsylvania, 319 U.S. 105, 115 (1943).

[136] 617 P.2d at 506.

[137] *Id.* at 509 n.7 (citations omitted).

[138] Since the *Urie* court did not engage in a compelling state interest analysis, its decision could not be applied to a case involving a fundamental right without first making that important distinction. If the Nebraska court made the distinction, it was with the mind and not the pen.

[139] The rationale of a case involving a challenge to teacher certification requirements, Kentucky State Bd. of Elementary & Secondary Educ. v. Rudasill, 589

The court, in the last two paragraphs of its opinion, did attempt to pay some respect to the compelling interest standard, but without much enthusiasm or success.[140] First, the court stated:

> However, we think it cannot fairly be disputed that the requirement of a baccalaureate degree for teacher certification is neither arbitrary nor unreasonable; additionally, we believe it is also a reliable indicator of the probability of success in that particular field. We believe that it goes without saying that the State has a compelling interest in the quality and ability of those who are to teach its young people.[141]

Although this appears to be an accurate statement, its relevance to the test employed by *Sherbert* and *Yoder* is unclear. Both *Sherbert* and *Yoder* require the compelling state interest to be in *not* allowing an exemption rather than simply in the subject matter of the regulation.[142] The fact that a regulation is neither "arbitrary nor unreasonable" is not determinative in a free exercise case.[143]

The last statement made by the Nebraska court concerning the existence of a compelling state interest was as follows: "The refusal of the defendants to comply with the compulsory education laws of the State of Nebraska as applied in this case is an arbitrary and unreasonable attempt to thwart the legitimate, reasonable, and compelling interests of the State in carrying out its educational obligations, under a claim of religious freedom."[144] Again, the court failed to appreciate that the compelling state interest must be in denying the exemption to those particular defendants,[145] and that the state's general interest in carrying out its educational obligations is not enough to sustain its burden.[146] Further, even if the state sustained its burden of proof, it would still have an obligation to prove that there were no less drastic alternatives available.[147] The Nebraska Supreme Court did not even mention this consideration in its decision.

S.W.2d 877 (Ky. 1979), *cert. denied*, 446 U.S. 938 (1980) (decided on state constitutional provision), was rejected by the Nebraska court in favor of *Urie*. 207 Neb. at 816, 301 N.W.2d at 579. In so doing, the court failed to recognize an important distinction between the two cases. *Rudasill* involved a fundamental right, whereas *Urie* did not. The difference in the two opinions could be directly accounted for by the degree of scrutiny employed in the tests in each.

[140] 207 Neb. at 816-17, 301 N.W.2d at 579-80.

[141] *Id.* at 816-17, 301 N.W.2d at 579.

[142] *See* notes 29, 38 & accompanying text *supra*.

[143] Wisconsin v. Yoder, 406 U.S. 205, 220 (1972).

[144] 207 Neb. at 817, 301 N.W.2d at 580.

[145] *See* notes 29, 38 & accompanying text *supra*.

[146] This was precisely one of the issues decided in Wisconsin v. Yoder, 406 U.S. 205 (1972).

[147] Sherbert v. Verner, 374 U.S. 398 (1963); Braunfeld v. Brown, 366 U.S. 599 (1961).

IV. CONCLUSION

The free exercise test, as synthesized by the United States Supreme Court, has granted to individuals an absolute right to believe as their consciences dictate and a significant right to practice those beliefs without unnecessary governmental interference. In the area of education, however, this right has been somewhat restricted by unnecessary government regulation. To properly protect the rights of individuals to follow their consciences in religious matters, adherence to the free exercise test as laid down by the Supreme Court is in order. The practical result of that test does not unduly hinder the state from protecting its legitimate interests in education. That result may be stated as follows: When parents, because of religious reasons, object to public school education, they may opt to send their children to a private school.[148] If there is no private school within a reasonable distance which is both state-approved and not violative of the parents' religious beliefs, the parents should have the option of providing an "equivalent" education. In any contested case, the burden is on the state to show that its educational interests are not being met. Only then should the state be able to sustain teacher certification requirements in the face of a free exercise challenge.

The recent case of *Douglas v. Faith Baptist Church*[149] even if correct in its ultimate decision,[150] constitutes a severe blow to religious freedom in Nebraska and is contrary to the free exercise test which has evolved through United States Supreme Court decisions. The decision will unnecessarily place individuals in a position where they must make a choice between their God and their government;[151] it will not be "unreasonable" for those individuals to choose to obey their God and suffer punishment at the hands of the government.[152] The effect of the Supreme Court's compelling interest rule is to limit those situations as much as is practically possible. But when state courts fail to follow that rule, the circumstances in which a choice is demanded increase to the detriment of both the individuals involved and society in general.[153]

Timothy J. Binder '81

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[148] Pierce v. Society of Sisters, 268 U.S. 510 (1925).

[149] 207 Neb. 802, 301 N.W.2d 571, *cert. denied*, 102 S. Ct. 75 (1981).

[150] If the facts failed to establish an infringement or, alternatively, if the facts established an infringement but further established that the education received in the church-operated school was below the level of education *necessary* to insure the continued viability of our society, both politically and economically, and additionally that the state's method of regulating education in this area was the least drastic alternative, then the court's ultimate decision in the case would be correct.

[151] The evil to be avoided, if possible, is a compelled choice. Sherbert v. Verner, 374 U.S. 398 (1963).

[152] *See* notes 3-7 & accompanying text *supra*.

[153] The effect on society of increasing the number of coercive choices required is the encouragement of civil unrest and the antagonism of certain groups within society. The effect on individuals is increased mental pressure as well as the loss of liberty or property in certain situations. Neither result is desirable.

APPENDIX - B

SPIRE'S REPORT

THE REPORT OF THE GOVERNOR'S CHRISTIAN SCHOOL ISSUE PANEL

TRANSMITTAL LETTER

January 26, 1984

The Honorable Robert Kerrey
Governor of Nebraska
State Capitol
Lincoln, Nebraska 68509

Dear Governor Kerrey:

On December 12, 1983, you created the Governor's Christian School Issue Panel and charged it to "examine and report on public policy questions surrounding the Christian School issue in Nebraska".

I respectfully submit to you the report of this panel. We commend you for your keen interest in this important issue and thank you for allowing us to participate in the study of it.

We owe much to (a) the many people with whom we spoke and corresponded, (b) the authors of the vast number of reference materials we studied, and (c) your considerate staff members. Although our thanks go to all of these persons our recommendations are our own, for which we take full responsibility.

This issue presents profound and difficult challenges. Nonetheless, we believe that it can be resolved in a responsible manner because of the inherent good sense of Nebraskans and our state's tradition of fairness.

Very truly yours,

Robert M Spire

Robert M. Spire
Chair

RMS:sa
enclosure

I.

REPORT SUMMARY

Nebraska has an obligation to assure that children receive a good education. This means adequate training in basic skills and a knowledge of how our system of government works. The goal is to develop persons who can function constructively as adults and contribute to the welfare of others.

Nebraska carries out its educational responsibilities through laws and regulations which establish that all schools in Nebraska, both public and private, meet certain requirements. Chief among these requirements are those for (a) teacher certification, (b) courses of study, (c) material and equipment, and (d) grades and promotion. In addition, there are requirements regarding (a) compulsory education, (b) health and safety, and (c) fire regulations. Many education leaders consider these requirements essential for the State to fulfill its obligation to assure that Nebraska children are well educated.

There are some Christian schools which object to these State requirements on religious grounds. They assert that their educational efforts are an extension of their church ministry. From this they conclude that since the State cannot control religion it cannot regulate their schools. Thus, the State's desire to enforce its regulations is directly opposed by the church schools' denial of the State's right to do so as to them.

What is needed is an appropriate balance between the legitimate interest of the State in the education of Nebraska youth and religious freedom. Objectivity and balance are essential to a constructive resolution of this issue.

Can this conflict be resolved? Yes, and without a lot of difficulty. If so, how? We suggest this:

1. For church-related private schools Nebraska policy should be modified to create this exemption from present state requirements:

If all parents of children attending a church-related private school so elect, testing of their children shall be acceptable as an alternative to curriculum, teacher certification and related requirements for the school. These tests should be of a standardized nature recognized by the State Department of Education and educators as proper indicators of student progress. They should be administered annually by the County Superintendents. If the average test scores in each content area and at each grade level of all students enrolled in a school are at least equal to such average test scores of students in Nebraska public schools (or, if scores are not available for Nebraska public school students, then the nation as a whole), the school attended by these students need not meet the State curriculum, teacher certification and related requirements.

2. Parents who elect this alternative shall make a written representation to the State that (a) their religious beliefs dictate this choice, (b) they consent to a testing procedure for their children, and (c) they will supply regularly to the State evidence that their children are (1) meeting State mandatory school attendance requirements and (2) receiving a structured program of education which satisfactorily covers all basic areas of study included in State curriculum standards and is conducted with physical facilities and instructional equipment and materials comparable to State standards. If the parents (a) fail to comply with these procedures, (or their representations to the State are inaccurate), or (b) their children test below the prescribed averages, then their children will be considered to be in violation of State mandatory school attendance requirements.

3. Health, safety and fire regulations for church-related private schools shall remain as they are.

4. The result of this exemption is this: Church-related private schools, for reasons of the religious conscience of the parents of the children attending them, may operate without seeking a license or obtaining approval from the State. The parents of the students involved shall (a) submit their children to a testing procedure, and (b) report directly to the State compliance with mandatory attendance, basic curriculum and related requirements.

This would seem to be a just and reasonable recognition of (a) religious and parental rights, and (b) the freedom of Christian schools to exist. At the same time, it leaves intact the basis for health and safety standards, fire regulations and compulsory education. The election to seek this exemption can only be made for reasons relating to religious freedom.

We make these recommendations because we have concluded:

(a) Nebraska teacher certification procedures as presently defined violate the First Amendment free exercise of religion rights of Christian schools. This legal conclusion, together with our view of proper public policy, indicates to us the need to modify present practices in order to reach an appropriate accommodation between the interest of the State and religious freedom rights.

(b) The accommodation we suggest meets the religious issue without unreasonably interfering with the ability of the State to assure a competent education for Nebraska children and to establish standards for that education.

Our report describes how and why we have reached our conclusions. Reasonable people disagree as to what specific steps should be taken to resolve this issue. We recognize that our suggestions are simply one approach.

More important right now than any specific proposals is a recognition by all concerned that there are both educational and religious issues involved here which must be addressed in some form.

We hope that Nebraskans can agree on the common goal of recognizing (a) the State's obligation to have and enforce educational standards and (b) the legitimacy of religious freedom claims that some present State regulations are too restrictive when applied to Christian schools. This means that both State control and Christian school advocates must acknowledge some validity in the other's position. With this understanding we can then consider methods for accommodating these conflicting interests without compromising either (a) the obligations or standards of the State, or (b) the deeply felt religious convictions of Christian school supporters.

3.

WHAT ARE THE ISSUES?

There are profound issues about education, religion, constitutional rights, fairness and our responsibilities to each other involved. It is crucial that we clearly understand the actual nature of these issues.

We all seek the best possible education for our children; we also cherish our religious freedom. And we want to treat one another fairly and with respect. Governmental policies should accommodate all of these fundamental concerns.

The present Nebraska controversy has arisen in this manner:

(1) Nebraska law establishes State responsibility for and control of education. The reason for this law is the State's interest in the intellectual and cultural development of its children so that they may become responsible citizens. The legal basis of this law is threefold: (a) The Nebraska State Consti-

tution; (b) Statutes enacted by the Nebraska Legislature; and (c) Court decisions.

This State law creates the Nebraska State Department of Education as the agent of the State to administer this responsibility. To carry out its duties the Department devises and enforces detailed regulations. These regulations, together with the law itself, require both public and private schools to be licensed by the State.

To receive a license a school must make application to the Department, which will issue the license only if it approves the school. It will approve the school only if the school meets certain standards for (a) teacher certification and qualification, (b) courses of study, (c) material and equipment, (d) grades and promotion, and (e) mandatory student attendance. The Department asserts that schools which do not obtain this approval may not operate legally.

The State considers its direct control over teacher qualifications and other educational factors essential for it to fulfill its responsibility for the education of Nebraska children. It believes that meaningful education cannot take place in a classroom without some minimum state-determined control over what happens in that classroom (teacher qualifications, courses of study and related items).

(2) Several religious groups operate private schools in Nebraska. These schools enjoy fundamental rights derived from (a) the First Amendment to the United States Constitution, which guarantees to each person the right to "the free exercise of religion"; and (b) Article I, Section 4, of the Nebraska State Constitution, which contains a similar freedom of religion guarantee.

Most of these church-related schools consent to the State licensing rule and comply with the standards established by the State as a requirement for approval of the license. Some do not, however, and thus are denied legal status by the State. Among those who do not are some schools which may in fact fulfill the standards for approval, but refuse to apply for a license on the basis that the licensing procedure is itself an improper interference with their religious freedom. Others do not meet the standards for approval; they also refuse to accept the licensing procedure for the same religious freedom reason.

These groups recognize that the State has an interest in the education of their children. However, they assert that this State interest is limited to the results of the educational process, not to the process through which those results are obtained. They believe that their church school is an integral part of, and thus an extension of, their church ministry. From this they conclude that any State regulation of their school is in substance a regulation of their church and thus an improper State interference with their religion. In summary, they assert that the State's legitimate interest in the education of their children is only in the result of that education, not the process by which that result is obtained.

Stated another way, these church groups view State regulation of their schools as a control of process (which they consider to be a control over their churches). On the other hand, they view the State's interest in the results of the process (how well the students learn) as a matter between the State and the parents of the children (and thus not a control over the church in its educational ministry). They consider their schools to be responsible to the parents, not to the State.

They place great accountability upon the parents for the education of their children. They consider the essential responsibility for the education of the children to be upon the parents.

In short, they say that the State may require that their children actually learn certain basic skills, but that the State may not dictate to their church schools how these skills are learned. Therefore, they believe that the State infringes upon their religious liberty through certification of teachers and other requirements placed directly upon their schools.

(3) An impasse has developed. Some church schools insist on operating without meeting State requirements. The State responds by seeking enforcement of its requirements through closing noncomplying schools.

Can these competing interests of the State and these schools be accommodated in a manner which is properly responsive to the responsibilities, convictions and constitutional rights of both? We definitely think so.

Our recommendations are based on these three premises, to which we fully subscribe: (1) the conflicts here are very real; (2) these conflicts should be addressed directly and clearly; and (3) sound State educational policies and proper Christian school religious liberties can coexist.

4.

HOW DO OTHER STATES HANDLE THESE ISSUES?

There is considerable diversity.

A 1980 Florida Department of Education survey disclosed that thirteen states require private schools to hire state certified teachers. Two of these states exempt church-related schools and two others indicate that they do not enforce the law. Thirteen states do not certify private school teachers and twenty-four have a voluntary certification process.

Recent information compiled by the Nebraska State Department of Education is similar. This information shows that fourteen states require some form of teacher certification and thirty-five states do not. Precise information is lacking from one state. For private schools this information indicates that nine states virtually ignore them, eighteen states have a voluntary regulation system for them and twenty-one states have some compulsory requirements. Detailed information is lacking from two states.

In short, other states appear to do one of two things: (1) have mandatory certification requirements similar to Nebraska which they may or may not enforce; (2) exempt church-related schools from some or all state regulations. Among these are some who provide for a voluntary certification procedure for those church-related schools who want to have state approval.

We cannot get a great deal of guidance from other states. Why not? Because this Christian school regulation issue is a recent event. It is not something which states have been giving serious attention to for a long time. In addition, the First Amendment freedom of religion question involved in the regulation of Christian schools has not yet been clearly resolved through judical proceedings.

Other states are observing closely what Nebraska does with this issue for whatever guidance our state may be to them.

In summary, we have a social and constitutional issue here which we must work out ourselves without much help from others.

5.

WHAT GENERAL CONSIDERATIONS INFLUENCE THESE ISSUES?

We need to recognize that this Christian school issue does not exist in isolation. It is just one aspect of the much larger overall concern our nation has for church/state relationships in their many forms. In addition, there are a number of political, social, intellectual, and spiritual factors which relate directly to the issue. As we attempt to resolve it we should be aware of these influences:

(1) All would agree that education has perhaps the largest role in ensuring the future of democracy today. Our children must receive a good education in order to become constructive adults.

(2) There are many fine people in Nebraska and elsewhere who resent interference in their lives by what they consider to be "big brother social engineering" of an Orwellian nature. Typically these people are hard-working, thrifty, prudent, God-fearing and very reliable. You could not ask for more loyal or dependable friends. They are in every way as essential to the functioning of our social system as are those who are more in sympathy with modern governmental regulation of our lives. They simply want to be left alone. They are worried about the possible sacrifice of their individuality to group conformity. In our democratic and pluralistic society who can presume to say that the hopes and desires of these persons are any less important than those of others?

(3) In discussing this Christian school issue, we sometimes tend to categorize interested persons as "the citizens of Nebraska" and "the Christian school people". We should remember that there is one group here, not two. The Christian school people are just as much Nebraska citizens as anyone else and should be so recognized. Nebraska belongs equally to all its people. We all are in the same boat, and a great boat it is.

(4) Much analysis and rhetoric on this issue deals with the rights and interests of parents of school children, teachers, professional educators, judges and elected officials. All of these persons are important to our considerations. However, we must never forget that it is the welfare of the children which is the basis for all education, both public and private. It is thus important that we constantly remind ourselves that what we seek here is resolution of a fundamental church/state issue which will be in the best interests of the children directly involved. And in the scheduling of priorities, we should list the interests of the parents next to those of the children.

(5) The concept of religious freedom is basic to everything our nation stands for. Those who sailed on the Mayflower came to America to escape governmental restrictions on the exercise of their deeply felt religious beliefs. This

religious orientation, together with the "melting pot" pluralism which developed in the nineteenth century, has resulted in a society today which respects (and indeed demands) a high degree of tolerance for differing views, be they religious or secular.

In all of this, an individual's deeply held religious convictions become particularly relevant. For example, many persons feel alienated by life in the computer age, a life which they find to be very impersonal. Frequently one's church (including church activities, such as a church school) provides the necessary sense of community a person needs to offset this feeling of alienation in an impersonal society. Being a member of a church family can strengthen one's sense of personal dignity

And in our hearts and minds we all must come to grips with the nuclear age. A person's sense of religion and relationship with his or her deity can be a necessary source of support and strength in finding meaning to life and in relating life to the threat of nuclear annihilation.

(6) Today there is national concern for the quality of education, both public and private, at all levels. This concern has been evidenced by the reports of President Reagan's National Commission on Excellence in Education and Governor Kerrey's Nebraska Schools Task Force on Excellence in Education. This concern results in a demand for effective means to strengthen the caliber of instruction. Doing this calls for increased teacher competence, revisions of educational curricula, improvements in school equipment, possible lengthening of school study years and many other factors which go into an educational undertaking.

(7) Today there is a national mood of distrust in large bureaucratic entities and particularly in government. With regard to education this distrust shows up in a greater desire of parents to have some meaningful control over the education of their children. Private church related schools are one means by which parents may achieve more genuine participation in the control of the education of their children.

We should understand and respect the fact that many Christian school advocates are not primarily worried about the teaching of basic skills such as reading, writing and mathematics. They concede that their children can learn these skills in public or other private schools. Rather, they are concerned about the teaching of value systems. They view state control of schools through teacher certification and other requirements as a means of imposing the state's value system on the schools. They view this state value system as being too secular, and in direct conflict with the spiritual and religious value systems of their church ministries as applied to their schools. In a democracy these competing value systems must be allowed to co-exist and to compete. This co-existence is the real meaning of the First Amendment "free exercise of religion" clause.

(8) We should recognize that it is easy to be overly impressed with the practices and customs of our own particular domain. All of us must avoid developing a medieval trade guild mentality. We must look beyond the borders of our individual bailiwicks. We should not allow institutional loyalty to become a substitute for thought. There can be more than one way to achieve goals, and we should at least be willing to try different approaches.

(9) The supporters of Christian schools in Nebraska are genuinely religious in their orientation. They are responsible people. They feel deeply about their convictions and take their relationship with God as they understand God seriously. Clearly they are not using religion as a subterfuge to advance other goals. Contrast the integrity and religious sincerity of Nebraska Christian schools with the experience in many southern states after the 1954 Brown Case United States Supreme Court decision outlawing segregation in public schools. Soon thereafter a large number of private schools, many of them church related, were established for the primary purpose of avoiding the desegregation of education. These "segregation academies" were just that and not really for the purpose of improving education or making it more religious.

(10) The present existence and possible future extension of the number and variety of private church related schools in Nebraska is not something that Nebraska citizens should be apprehensive about. We should not fear what some might consider to be alien ideas of any group, religious or otherwise, with whom we may disagree or have little in common. In a free society we must have confidence in people ultimately to choose sound ideas. Thus, we allow various groups to compete in schools and otherwise for the allegiance of the citizenry. It is better to allow this open competition than to make martyrs out of those whose views are not welcome to the majority.

We should not build a fence around Nebraska to keep out "alien" ideas and groups. The good sense and wisdom of Nebraska citizens will continue to prevail when considering competing ideologies and institutions. Political pluralism, freedom and openness in our society remain essential.

(11) Neither the federal government nor any state,

including Nebraska, should attempt to decide the correctness of any religious belief, but only whether or not such belief is sincerely held by those who profess it and is not dangerous to public safety. It is not for the Methodists to say that the Presbyterians are any more or less correct than they are themselves.

A brief analysis of constitutional law may be helpful here. The United States Constitution, especially the Bill of Rights section, is designed to protect each of us from (a) government and (b) each other. This is why our individual constitutional rights are not absolute; they must somehow accommodate conflicting rights. For example, my First Amendment right to free speech does not allow me to libel you. Your freedom of movement does not allow you to punch me in the nose (thank goodness!). My right to operate my business freely does not allow me to discriminate against you on the basis of race or religion. The point is that these constitutional "rights" have built into them corresponding "duties". The duties require us to recognize and accommodate competing rights.

Which brings us up to the Christian school issue in Nebraska. Neither the State itself, nor any one of us, has the authority to decide the limits of First Amendment freedom of religion rights. Nor can the State in any way prefer one religion over any other.

The State does not decide what the constitution means. The constitution speaks for itself. When it is necessary to determine what the constitution is saying (which is often) it is the function of the Courts to interpret its meaning. And so, whatever "free exercise of religion" rights the Christian schools enjoy under the constitution are there as a matter of right, not by the good grace of the State or any of us.

(12) Teachers, school administrators, religious leaders and all professional educators who carry the great working burden of operating our schools warrant support. Their efforts clearly are in the public interest, and they should be praised for their genuine service. It is neither accurate nor fair to place all the blame on educators for whatever ills may now be present in our educational system. If the bus breaks down you can't blame it all on the bus driver.

These concepts identified here are wide ranging in scope and certainly do not provide us with solutions to this issue. However, some awareness of them may be useful to us as we search for solutions.

6.

WHAT POLICY OPTIONS ARE AVAILABLE?
HOW DO WE VIEW THESE OPTIONS?

What should our Nebraska public policy be? We have three choices:

(1) Do nothing. Leave all State regulation exactly as it is now (and thus have the ultimate resolution of the issue decided by courts).

(2) Exempt Christian schools and children attending them from all State regulation of any kind.

(3) Change in some way the manner in which the State now regulates private schools (church-related, non-sectarian or both).

In a perfect world, we would not have to choose among these three alternatives. The correct one would be easy to determine and satisfactory to all. But in our imperfect, and thereby much more interesting and challenging, world we often must make unclear and difficult choices. Although making these choices is necessary for society to function, the results can never be satisfactory to everyone. But we should not let this upset us. In a society which respects the opinions of all, it is inevitable that we frequently will have strong disagreements on policy questions. This inevitability means that we must (a) understand and respect the process of public resolution of our differences, and (b) accept the compromise settlements which any democratic and pluralistic society must have if that society is to survive. With this in mind let us look at each of these three alternatives:

(1) Do nothing. Leave all State regulation exactly as it is now (and thus have the ultimate resolution of the issue decided by courts).

This assumes that all present Nebraska laws, regulations and procedures with regard to church-related schools are completely proper in their present form and warrant no changes of any kind. It also assumes that all positions advanced by the supporters of Christian schools are without merit and, therefore, no adjustments are necessary to meet any of their concerns. Although this alternative has the obvious advantage of simplicity (we need not inflict upon ourselves the difficult task of examining and modifying any of our present practices), we do not consider it a viable option. We believe that some of the concerns of Christian school supporters have validity. From this we conclude that modifications in present Nebraska procedures are both necessary and desirable.

(2) Exempt Christian schools and children attending them from all State regulation of any kind.

This would meet all complaints of Christian school supporters. It also would result in the State declining to accept any responsibility whatsoever for the education of children in Christian schools. In our judgment, the State clearly cannot so abdicate its responsibility for the education of a single Nebraska child. Both the constitution itself and sound public policy place upon the State a profound duty to assure that its youth receive effective education for citizenship. The exact limits of the constitutional right to the free exercise of religion as related to education are not clear. However, no reasonable interpretation of these limits would eliminate all interest of the State in the education of children in private church-related schools.

(3) Change in some way the manner in which the State now regulates private schools (church-related, non-sectarian or both).

Doing this represents a compromise between alternatives (1) and (2) above. It thereby suffers from the liability of not being acceptable to supporters of either alternative. It requires that supporters of both alternatives recognize some degree of validity to the position of the other. This is never easy to do, particularly when convictions are strongly held and emotions run high. In such circumstances it is extremely difficult to stand back and look anew at a situation with a significant degree of respect for strongly opposed convictions. We should heed the advice of F. Scott Fitzgerald, who said:

> "The test of a first-rate intelligence is the ability to hold two opposed ideas in the mind at the same time, and still retain the ability to function."

Difficult as all this may be, it nonetheless is our conclusion that some resolution of this Christian school issue should be sought within the parameters of this alternative number (3).

Throughout the country today there is a growing body of opinion which suggests that all states, including Nebraska, should increase, rather than decrease or leave alone, state standards for public and private education. This body of opinion comes from present national disenchantment with many aspects of our nation's education system.

"Why can't Johnny read?" is a frequent expression which summarizes the frustrations many people feel about education today. And so perhaps the State of Nebraska ought to be seeking more, not less, regulation of schools in order to upgrade educational standards and thereby increase the quality of education of Nebraska children. If done in a thoughtful and knowledgeable manner this may be sound policy. We think it is.

Certainly any reasonable efforts to increase the effectiveness of our educational system should be encouraged. Constructive and well thought out proposals for improving education in Nebraska are contained in the outstanding September 30, 1983 report of Governor Kerrey's Task Force on Excellence in Education in Nebraska Schools. This perceptive report should be required reading for all Nebraska citizens. However, with specific reference to Christian schools, we believe that any strengthening of standards must be accomplished in a manner which properly takes into account (a) the religious convictions and rights of parents who chose to have their children educated in Christian schools, and (b) the children themselves.

We conclude that no one involved in this controversy has a monopoly on wisdom. There are legitimate conflicting views held by people in good faith. Nor is there any evidence that any one involved is acting in bad faith. Quite the contrary. What we have here is a dispute which has triggered intense and indeed quite heated loyalties from a wide range of sincerely held convictions. Such a situation is not intrinsically wrong. It may be the inevitable result of a functioning pluralistic society where everyone is entitled to hold and to express his or her individual personal views. It is the sort of thing a free society encourages. And well that it should. The problem is simply that, in expressing these diverse views, all of us must at some point recognize that we can't have it all our own way. In every aspect of the common life there must be some sense of shared responsibility. And so we conclude that Nebraska Christian school issue policy should be addressed on the basis of two premises:

(1) Some modification of the present Nebraska system for regulating Christian schools is appropriate.

(2) The parents of children attending Christian schools must be willing to demonstrate to the state satisfactory educational achievement by their children.

In making the specific recommendations which follow our panel does not presume to have all, or even any, of the answers. We address the matter of resolution of this issue very humbly.

We will consider our efforts worthwhile if we can help in any way to provoke a thoughtful, constructive, unemotional, intelligent and wise discussion of the subject.

Reasonable people will disagree as to the exact means necessary to accommodate the conflicting interests involved. The important element is a sincere recognition that there are genuine conflicting church-state concerns here which require some accommodation.

The resolution of this controversy calls for some old-fashioned good sense, both common and horse. We hope that some of this good sense appears in our recommendations. In any event, Nebraskans have a tradition of demonstrating concern for one another, wisdom and practical judgment. For this reason we are confident that Nebraskans will resolve this in a sensible and fair manner.

7.

WHAT SPECIFIC RECOMMENDATIONS DO WE MAKE?

1. The State clearly has an obligation to establish reasonable and effective educational standards and to exercise an appropriate degree of control over all educational efforts, both public and private. To do anything less would be an irresponsible abdication by the State of its duty to the children of today and to future generations of Nebraskans. And so the only issue here is that of defining these "reasonable and effective" standards as applied to church-related private schools.

The basic Nebraska educational goal of quality education for all children should not change. The only change needed is that certain techniques designed to accomplish this goal should be modified to accommodate legitimate (and in some instances constitutionally protected) religious liberties.

2. The First Amendment right to the "free exercise of religion", like our other constitutional rights, is not absolute. It must respect and adjust to other constitutionally protected rights. Therefore, Nebraska educational policy can and must continue to be interested in all education, including that which is church-related.

Church members properly can demand that this State educational policy interfere with their religious convictions as little as possible. But they must recognize the legitimacy of the State's interest in the education of their children and accept some regulations designed to promote this State interest.

In a similar manner, the State must recognize the legitimacy of sincerely held religious convictions and design its procedures so as to impinge as little as reasonably possible upon them.

3. Nebraska laws and regulations contain detailed requirements for school curriculum content, teacher certification, mandatory attendance, safety rules and related items such as physical facilities and instructional equipment and materials. For church-related private schools Nebraska policy should be modified to provide for the following exemption procedure:

(a) If all parents of children attending such a school so elect, testing of the children shall be acceptable as an alternative to curriculum, teacher certification and related ites requirements for the school. The tests should be of a standarized nature. They must be nationally recognized by the State Department of Education and educators generally as proper indicators of student progress. They should be administered annually by the County Superintendents. If the average test scores in each content area and at each grade level of all students enrolled in a school are at least equal to such average test scores of students on the same or comparable tests in Nebraska public schools (or, if scores are not available for Nebraska public school students, then the nation as a whole), the school attended by these students need not meet the State curriculum, teacher certification and related items requirements.

(b) Parents who elect this alternative shall make a written representation to the State that (1) their religious beliefs dictate this choice, (2) they consent to a testing procedure for their children, and (3) they will supply regularly to the State evidence that their children are (a) meeting State mandatory attendance requirements and (b) receiving a structured program of education which satisfactorily covers all basic areas of study included in State curriculum standards and is conducted with physical facilities and instructional equipment and materials comparable to State standards. If the parents (1) fail to comply with these procedures (or their representations to the State are inaccurate), or (2) their children test below the prescribed averages, then their children will be considered to be in violation of State mandatory school attendance requirements.

(c) Health, safety and fire regulations for church-related private schools shall remain as they are.

(d) What is the result of this exemption procedure? A church-related private school, for reasons only of the religious conscience of the parents of the children attending it, may operate without seeking a license from the State or receiving any direct State approval. However, the parents of the students involved shall themselves (1) submit their children to the testing procedure, and (2) report directly to the State concerning compliance with mandatory attendance requirements and basic curriculum and related items standards.

This would seem to be a just and reasonable recognition of (1) religious and parental rights, and (2) the freedom of Christian schools to exist. At the same time, it leaves intact the basis for health and safety standards and compulsory education. Requirements for certification of teachers and the licensing of schools could be waived, but only for specific conditions relating to religious freedom.

(e) Two principles are significant here. First, the concept of *accountability* is crucial. With this exemption procedure the *parent*, not the school, is accountable to the State. Through this parent accountability the State can fulfill its responsibility for the educational achievement of the children. Second, our view of the First Amendment free exercise of religion right as it applies here is this:

(1) The State has a "compelling interest" in the education of the Christian school children.

(2) The State's "compelling interest" must be exercised with as little interference as possible with the religious claims of the Christian schools.

(3) The State's "compelling interest" is in the actual achievement of the students, not in the means by which that achievement is obtained.

(4) When confronted by a First Amendment free exercise of religion claim it is an unconstitutional interference with religion for the State to insist on controlling the educational process (unless it can be shown that the proposed controls are essential to the desired educational achievement). Rather, the State must limit its interest to the actual achievement of students unless and until it is shown (which it has not been) that reasonable achievement cannot be obtained without State control of the process.

Some say that there must be *some* State control over teacher qualifications because there is some minimal training all teachers must have before entering a classroom. This may be so, but until it is more fully demonstrated by hard evidence, we do not think it can be constitutionally supported in this instance.

(f) Church-related private schools whose children's parents unanimously elect this exemption from curriculum and teacher certification requirements need not apply for a license from the state. They may operate without State approval.

(g) Parents who make this election for their children must acknowledge in writing that (1) because of their election they assume full responsibility for the education of their children, and (2) on behalf of themselves and their children they will not hold the State responsible for their children's education.

(h) School catalogs, public announcements and other materials which describe the school to the public and all enrollment records (such as transcripts) must show that the school is not State approved. This is a "truth in labeling" concept.

(i) Approval and accreditation requirements shall remain as they now exist for all church-related private schools whose children's parents do not unanimously elect for religious reasons only this exemption procedure. In summary, there shall be essentially two classes of church-related private schools, those which are approved and those which are not approved. Those whose children's parents so elect are simply unapproved (but may legally operate) and not a separate class of approved school.

(j) Incentives should be developed to encourage those church-related private schools (the Parochial systems, for example, which meet State requirements to continue to do so. It is not desirable that these schools opt out from the present requirements (which they meet) so as to take the same approach as unapproved schools may choose under this change. Such incentives could be items of this nature: A clear public designation as a fully approved and/or fully accredited institution; no requirement that the children attending the institution be tested; and other factors which serve this purpose.

Why do we make these suggestions?

1. The State cannot properly prefer one religion over another, discriminate among different religions, or give to any religious group a privilege not given to other religious groups. For these reasons this exemption procedure should be available across the board to all private church-related schools and not just to Christian schools.

2. The requirements that (a) parents acknowledge that they are sending their children to an unapproved school, (b) that in doing so they will not hold the State responsible for the education of their children, and (c) the suggestion that all pertinent records identify unapproved schools as such are designed

for two purposes: (1) to assure that the parents are made aware of and fully understand the fact that they are sending their children to unapproved schools, and (2) to protect the State from criticism by (or indeed possible liability to) parents or children who might later claim that the State (through this exemption procedure) did not properly carry out its obligation to assure proper education for these children.

3. The reason for the student testing requirement is to meet some minimum State responsibility to the students of the unapproved schools. The principle here is that the State must be concerned with all students. It cannot and should not turn its back completely on the welfare of the students who are enrolled in these schools, even though there may be only a few such students and the parents of the students choose to have their children educated in a school exempt from State standards. In spite of the parents' free choice, the State must have some assurance that these students accomplish some minimum educational achievement as defined by the State.

Both the children themselves and the State obviously have an interest in educational results which make the children constructive citizens. However, we must not forget that "beauty is in the eye of the beholder." Those parents with children in Christian schools are sincerely convinced that the education their children receive is superior to that obtained in other schools. They are not in awe of State standards, and in fact have serious reservations about what they consider to be a State-imposed secular value system contained in State standards. Irrespective of constititional considerations, we must respect our fellow citizens by remembering this paramount truth: None of us, the State included, can presume to have superior judgment as to the ultimate validity of religious beliefs or the larger goals of education beyond the learning of basic skills. The nature of a true democracy is such that there always will be fundamental differences of opinion.

Some say that any student testing procedure is defective on two counts: It is (a) simplistic and (b) invalid as an after-the-fact remedy. Let us examine these ideas:

(a) Is testing simplistic? Every major public library has a huge stack of books and professional journals dealing with the pros and cons of standardized testing. You could fill the Grand Canyon with these publications. Some experts have great confidence in the tests. Others do not. Some assert that the tests are culturally biased. Others say they can be rigged so as to be something less than objective. These criticisms may be valid in some instances. However, we think the better evidence is that standardized tests can be of some help in determining academic achievement. Any tests used in Nebraska to monitor basic skills achievements by Christian schools students can and should be examined closely by educators, legislators, parents and others. Such an examination should assure their integrity as a testing device.

(b) Is testing invalid as an after-the-fact remedy? Is the horse already out of the barn by the time the test comes around the bend? Any test is after the fact. The only question is how far after the fact. Professional schools normally test their students from four to eight months after study of the tested subjects begins. Certified public accountant and lawyer bar examinations are given several years after study of some of the skills tested. We suggest that annual student testing is both frequent and soon enough for student achievement to be determined on a reasonably current basis. Unsatisfactory progress by a student would be determined within a year. This should be soon enough to alert parents and education authorities to any special needs of the student.

4. Some accommodation to the First Amendment freedom of religion claims of the Christian school supporters must be recognized. The State's in loco parentis rights with reference to the education of children are in conflict with the First Amendment free exercise of religion rights of Christian schools and the parents who wish to enroll their children in these schools.

When a conflict of this nature occurs the State in loco parentis rights must give way to some extent to the First Amendment free exercise of religion rights. We suggest that this exemption procedure properly accomplishes this, but does so in a sufficiently limited manner so as to avoid either (a) any general weakening of Nebraska education standards or (b) complete elimination of the State's obligation to Christian school students. In summary, this proposal carves out a special constitutionally protected niche for the Christian schools. It does not create a situation which would encourage Parochial and other private schools to lessen in any way their commitment to meeting present State requirements. We are not "mainstreaming" an exemption procedure by making it attractive to all church-related private schools.

5. We considered the testing of teachers in lieu of certification. This may bear study. However, we do not consider it as effective a device to meet the freedom of religion

issue as is the testing of students. It would be difficult to design teacher tests which would enjoy the same public acceptance as do standardized student tests. And this difficulty could result in these teacher tests being constitutionally suspect as an unreasonable interference with free exercise of religion rights. In this sense, teacher tests have some similarity to the certification process and thus raise the control of religion question with regard to Christian schools. Although the testing of students is not an ideal procedure, we conclude that it is (a) better than no check at all on the students, and (b) as a practical matter the most workable procedure with reference to the constitutional free exercise of religion concerns.

6. The practical result of these recommendations as they relate to the Christian school supporters is this: They may choose for religious reasons to have their children educated in schools unapproved by the State. However, when doing so they themselves, not the State, must be responsible for their decisions. Many of them want and are anxious to accept this responsibility.

7. There should be no weakening of the State's interest in equal educational opportunities for all in keeping with constitutional and moral principles. The exemption procedure described here should not be allowed to be used in any manner which would result in student admissions or study practices which have the effect of discriminating on the basis of race, color, religion, national origin or sex.

8. The procedures we suggest (or any other arrangements which might be adopted in their place) cannot guarantee success. They may not work out. However, we respectfully suggest that they be given a try. They should be watched closely. If evidence later shows them to be invalid then the whole matter should be reconsidered. Other arrangements can then be adopted. Nothing here is carved in stone.

9. Our task has been to address the Christian school issue, and this we have done. However, there are two related areas of concern which deserve attention also. These are the special concerns of Amish people for their educational principles and the growing home school movement in Nebraska and elsewhere. Although these two groups are beyond the scope of our study, we suggest that they properly deserve attention along with Christian schools. We are of the opinion that the testing and related procedures we suggest here for Christian school advocates also could be designed and applied to meet the religious freedom and policy convictions of the Amish and home school advocates.

10. Although a prompt resolution of the present controversy is to be sought, our report can be nothing more than a part of the process toward resolution. These issues warrant an effective continuing dialogue. To assist in achieving this we recommend that the Governor appoint an advisory panel to study church-state educational matters for at least the next two years (or until these issues appear to have been resolved in a reasonable manner). This panel should conduct an ongoing discussion with church leaders, professional educators, State Board of Education representatives, parents of school children, legislators, School Board members and others. It should make specific recommendations to the Governor, the legislature and Nebraska citizens on educational issues relating to the State's interest in educational excellence and religious freedom.

8.

WHAT GENERAL RECOMMENDATIONS DO WE MAKE?

1. Let us face this Christian School issue directly, clearly and without hedging in any way. Only if we tackle it head-on can we resolve it. Efforts to ignore, pass over or "get around" the concerns presented will only prolong and make worse an already difficult situation.

2. No one ever really wins a fight. We can't resolve this issue as long as any of us involved are separated by a wall of quiet (or, worse yet, noisy) hostility and overt suspicion. In our discussions we need to lower the decibel level.

The Biblical commandment to "Love Thy Neighbor" must mean something. We need a degree of harmony, which requires tolerance even if understanding is sometimes lacking.

We must confront issues, not personalities. The key to any constructive resolution of this controversy will be our ability to make judgments solely on the basis of the issues.

3. We should be very clear about these things:

a. Nebraska is blessed with high caliber teacher training institutions, teachers and school administrators. Our State also is fortunate to have a State Department of Education of the highest order under the direction of an outstanding State Board of Education. The Department's professional staff is competent, diligent and sensitive to social issues. Most important of all, it cares about Nebraska school children.

b. There are many excellent church-related private schools in our State. These schools readily meet all

State standards and frequently exceed them. They are to be commended for their high educational quality. We cite as examples the five church-related private school systems operated by the Kansas-Nebraska Conference of Seventh-day Adventists, the Nebraska District Lutheran Church-Missouri Synod, the Catholic Archdiocese of Omaha and the Catholic Dioceses of Lincoln and Grand Island. In our study we also observed examples of quality in Christian schools.

c. We should understand that some elements of education are not measurable by readily ascertainable techniques. Testing, awards and the like do not tell the whole story. For example, all we need to know about prizes is that Mozart never won one.

d. Some suggest that this controversy may be resolved by the simple expedient of not enforcing the law; that is, since there are so few Christian schools involved and a small number of children attending them, just look the other way. We find this solution untenable. Laws should be both enforced and obeyed. If laws are unfair (or unconstitutional) they can and should be changed through legitimate legislative or judicial action. Simply ignoring noncompliance corrupts the very concept of government by law.

e. The proper way to resolve this controversy is through normal legislative channels, rather than through reliance on court proceedings. The judicial process tidies up and organizes; it neither solves nor explains.

4. Nebraska has sound educational standards of which it should be proud. Our State need not and should not compromise these standards in order to meet the requirements of religious freedom or for any other reason. First Amendment freedom of religion guarantees and proper policy recognition of religious convictions do not require compromising the State's basic system of educational standards. And whatever these standards may be, they should not feel threatened by educational procedures of Christian schools (which, after all, can and do set legitimate standards of their own). Rather, all that is required is some limited substitute procedure (such as we suggest) to accommodate the genuine religious convictions of some of our fellow Nebraska citizens.

Our confidence in state standards should not prejudice our view of Christian and other church-related private schools who respond "to the beat of a different drummer." These other schools can provide quality education for their students. In our democratic society we ought to be willing to let the educational market place influence the viability of schools. Over the long run people will not support inferior schools, public or private.

9.

CONCLUSION

This issue has been before our state for too long. It is manageable and does not warrant an endless debate. It can and should be resolved now. Or sooner. Rome was not built in a day, but that was because there were no Nebraskans on the job.

We have attempted to approach this in an open-minded fashion. Aristotle would not have qualified to teach philosophy in Nebraska schools. On the other hand, when Aristotle was contemplating the universe there was no state-controlled system of universal education (with the result that the illiteracy rate was appallingly high). And so it goes. We have tried to consider carefully all issues and points of view without prejudging anything.

Irrespective of how this report may be evaluated, we strongly suggest that this Christian school controversy should not be viewed as a problem. Rather, it is an opportunity for Nebraskans to think carefully about the important concepts of education and religious liberty. By doing so we should be able to stake out some common ground upon which to resolve this.

What is this common ground? We suggest that most of us would recognize that (a) the State has an obligation to determine and enforce reasonable educational achievement standards for students of private as well as public schools, and (b) there is legitimacy to the religious freedom claim that some present State regulations are unnecessarily restrictive when applied to Christian schools. We can get off dead center by agreeing that the proper accommodation of these two sometimes conflicting concepts may require limited changes in State policy. What these exact changes should be is something which can be debated calmly (and about which there can be reasonable differences of opinion). We have proposed some specific changes in the hope that from our ideas and the thoughts of others some viable resolution will emerge.

Perhaps this challenge tests the genuineness of our tolerance of, and respect for, differing beliefs. We sometimes think everyone should be in our own image. We want others to be clones of ourselves. And yet it is the diversity of American life, including the very pluralism evidenced by widely different religions, which gives our society its vitality and indeed its substance. Pluralism keeps us from being bored with one another. What would American music be without the variety provided by a Count Basie, an Itzhak Perlman and a Catherine Crozier?

The people of Nebraska are citizens in the classical Greek sense: concerned with all aspects of the welfare of the State; responsible but penetrating critics aiding in every effort to make "the good life" possible for all people. Viewed in this context, prompt settlement of this issue is certainly possible, perhaps even likely.

No person should be asked to compromise his or her sincerely felt religious beliefs. Nor should the State be asked to back away from its responsibility for an education system which will produce highly knowledgeable students. This report is an effort to demonstrate that there are reasonable means by which an accommodation of these sometimes conflicting interests can be achieved without damage to either.

A fair and reasonable resolution of this controversy is more than just a matter of education and religion. It all comes down to a word which is the cornerstone of our society. Justice.

APPENDIX A

NEBRASKA EDUCATION FACTS

What is the elementary and secondary school population in Nebraska? Nebraska Department of Education figures show that there are a total of 305,858 Nebraska students distributed among schools as follows:

(a)	In approved public schools:	269,103
(b)	In approved private schools:	36,478
(c)	In unapproved private schools:	227

There are approximately 400 public school districts having both secondary and elementary schools and slightly under 700 districts with elementary schools only. Most of the state's 264 private schools are church-related. Of these 264 schools 250 are state approved and 14 are unapproved. The Christian schools now at issue in Nebraska are among the 14 unapproved schools.

APPENDIX B

PANEL MEMBERS

1. Mrs. Sally Knudsen
   #11 Bishop Square
   3901 South 27th Street
   Lincoln, Nebraska 68502

2. Mr. Alcurtis Robinson
   Mutual of Omaha
   Mutual of Omaha Plaza
   Omaha, Nebraska 68175

3. Dr. Richard E. Shugrue
   Creighton University School of Law
   2133 California Street
   Omaha, Nebraska 68178

4. Mr. Robert M. Spire
   525 Farm Credit Building
   Omaha, Nebraska 68102

   Chair

APPENDIX C

PANEL PROCEDURES

The panel conducted its study through:

1. A large number of personal visits and conversations with people interested in and involved in this issue, such as:

(a) Nebraska State Department of Education staff members and present and former members of the Nebraska State Board of Education;

(b) Ministers who actually operate Christian Schools;

(c) many individuals who are interested in the issue and whose views differ widely, including a number of ministers of Christian churches who do not themselves operate schools but are interested in the operation of them;

(d) professional educators, including teachers, Nebraska State Education Association representatives, college and university teacher training personnel, university professors and educational administrators;

(e) clergymen and others interested in and involved in the operation of Parochial and other church-related school systems in the State of Nebraska;

(f) parents of children in both public and private schools; and

(g) Nebraska citizens generally; we made a point of visiting about this issue with almost everyone with whom we came in contact personally.

2. Visits to Christian schools.

3. A series of lengthy panel meetings plus much communication among ourselves by telephone, letter and personal conferences.

4. A great deal of time in personal study and reflection. We all were waking up in the middle of the night thinking about this.

APPENDIX D
PANEL REFERENCE SOURCES

The panel studied and discussed a great many materials dealing with (a) the history of the Christian school issue in Nebraska and the country; (b) State laws, regulations and procedures governing education in Nebraska and elsewhere; (c) the basic concepts involved in defining appropriate church-state relationships with regard to matters of an educational and religious nature.

Many of these materials were supplied to us by the State of Nebraska Policy Research Office, the State Department of Education, supporters of Christian schools, representatives of the Nebraska Christian Home School Association and members of the Legislature. In addition, the panel itself collected and reviewed a variety of references, including:

a. News articles, editorials and book reviews from many newspapers (especially the New York Times; the Christian Science Monitor; the Wall Street Journal; the Washington Post; the Omaha Star; the Omaha World-Herald; the Lincoln Star; and the Lincoln Journal).

b. Critiques from magazines and professional journals (including the Nebraska Law Review; The Nebraska Humanist, published by the Nebraska Committee for the Humanities; the Black Scholar; Social Work, the Journal of the National Association of Social Workers; and the Harvard Educational Review).

c. Books (Human Values in a Secular World, Robert Apostol, editor; The New King James New Testament, Special Crusade Edition printed for the Billy Graham Evangelistic Association, Thomas Nelson Inc., Publishers; The Troubled Crusade: American Education, 1945 - 1980, Diane Ravitz, author; Beyond the Ivory Tower, Derek Bok, author; and many others).

d. Federal and state court decisions.

e. Written analyses prepared by panel members themselves for study by and comment from other panel members.

Although we obviously could not read everything on the subject, we tried to do our homework. We sometimes felt as if we had joined a Book-of-the-Day club.

APPENDIX - C

NEBRASKA CIVIL LIBERTIES UNION

February 24, 1984

This week it appears as though another effort will be made in the Nebraska Legislature to exempt religious schools from certain state regulations. I thought you might be interested in the position NCLU has taken on the issue.

NCLU has attempted to limit its concern with this issue to the constitutional questions involved. We evaluate the constitutional question as follows:

1) Is there a sincerely held religious belief at issue? To be sure, there is. The parents of the children going to these schools believe that the education of their children is an extension of their religion. They can no more accept state regulation of their church school ministers (i.e. teachers) than they could accept state regulation of their church ministers. We don't believe the sincerity of their belief can be questioned.

2) Is there a compelling state interest in the education of its citizens? In our view the answer to this question is yes. The state cannot guarantee an adequate education, but it at least has an oversight role to some degree.

3) Is there a means available to the state, to satisfy its interest, that is less intrusive into the religious freedom of the church goers than teacher certification? In our view again the answer is yes. As you know, the Spire Commission has suggested the state satisfy its interest through a program of testing the religious school students and evaluating their performance in relation to students in other school systems.

Whether or not testing the students protects the state interest as well as teacher certification is alleged to do, is difficult if not impossible to answer conclusively.

A conclusive answer to that question, given the conflicting points of view on it, is not really the challenge before you at this time. The challenge before you concerns tolerance of another person's religious ideas. It is indeed tragic that an Amish settlement had to leave Nebraska because the state could not accomodate the life style of those people. Will the state also force others to leave because it is so tied to a particular set of regulations? That is the question facing you.

I suggest to you that this issue is not dissimilar, in a broad sense at least, to the issue of religious freedom that prompted many to come to this country over 200 years ago. They came hoping to be free to practice their religion. I hope the Nebraska Legislature will inject some tolerance into this current situation.

Best regards,

Dick Kurtenbach
Executive Director

APPENDIX - D

UNITED STATES CIVIL RIGHTS COMMISSION REPORT

UNITED STATES
COMMISSION ON
CIVIL RIGHTS

1121 Vermont Avenue, N.W.
Washington, D.C. 20425

MEMORANDUM:

To: The Commissioners

DATE: February 29, 1984

FROM: Commissioner Robert A. Destro

RE: State Regulation of Religious Schools: The Case of the "Nebraska Seven" and the Religious Freedom Implications of Pervasive Government Regulation.

I. Interest of the Commission

The jurisdiction of the Civil Rights Commission to study the myriad civil rights issues which arise when government seeks to regulate religious practices rests upon its statutory mandate to: (1) study and collect information concerning legal developments constituting discrimination or a denial or equal protection of the laws under the constitution because of ... religion ... , or in the administration of justice"; (2) "appraise federal laws and policies with respect to discrimination or denial of equal protection of the laws because of ... religion ... or in the administration of justice"; (3) serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of ... religion, ..."; and (4) "submit reports findings and recommendations to the President and the Congress" respecting remedial action.

The title of this memorandum, "State Regulation of Religious Schools: The Case of the "Nebraska Seven" and the Religious Freedom Implications of the Pervasive Government Regulation", was chosen to emphasize that the case of the "Nebraska Seven" presents issues related to, but distinct from, the Free Exercise issues raised when government undertakes to regulate religious schools. The "Nebraska Seven" case involves issues reaching the heart of the Commission's "administration of justice" concern for the ability of individuals to obtain prompt and fair redress for constitutional claims through the state and federal systems of justice. The broader issue of government regulation of church schools and other burdens on institutional religious activity raises First Amendment/Free Exercise questions which were not discussed in the Commission's first and only formal report to date on religious freedom questions, Religion in the Constitution: A Delicate Balance [September 1983, C.P. #80].[1]

In the pages which follow I will attempt to set out in summary form the manner in which each of these statutory mandates has been affected by developments in Nebraska and elsewhere. Nebraska is not the first state--and it certainly will not be the last--where federal civil rights to religious freedom are set up as a defense to pervasive state regulation of church activities. Its unfortunate experience has sensitized many to the existence of a difficult problem. The case of the "Nebraska Seven" is doubly unfortunate: when seven fathers are held in jail for 92 days without bail, or advice of counsel before their initial incarceration by a state judge, and armed deputies stand guard outside a padlocked Christian church and school, something has gone seriously wrong. There is a need for greater sensitivity at the state and federal levels about religious freedom issues. "The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion." Wisconsin v. Yoder, 406 U.S. 205, 215 (1972). The impact of pervasive regulation on the ability of church schools to carry out their constitutionally protected mission is merely one of them. Speaking for the Supreme Court in Yoder, Chief Justice Burger recognized that the religious freedom of parents to educate their children does not leave much latitude for the heavy, though well-intentioned, hand of the state:

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[1] The Commission also sponsored a consultation in 1979, Religious Discrimination: A Neglected Issue, which focused on employment and administration of justice issues. The only report which focused on religious schools directly did so in a context in which the focus was racial discrimination rather than religious freedom, Discriminatory Religious Schools and Tax Exempt Status [December, 1982, C.P. #75]. No question of racial discriminationn is involved in the issues discussed in this memorandum.

> "Indeed, it seems clear that if the State is empowered, as parens patriae, to "save" a child from himself or his Amish parents ..., the State will, in large measure influence, if not determine, the religious future of the child. ... [But] Pierce [v. Society of Sisters] stands as a charter of the rights of parents to direct the religious upbringing of their children." Wisconsin v. Yoder, 406 U.S. at 232-233.

II. Recommendation:

That the Commission schedule a consultation which will focus on two distinct, but related problems:

> First, the role the federal government can and should play, in the protection of religious institutions, including church schools, from arbitrary or burdensome regulations imposed by state or federal authorities, in light of the standards set down by the Supreme Court in cases defining the scope of the Free Exercise Clause of the First Amendment; and
>
> Second, the Nebraska Seven case itself and the role, if any, that the federal government can and should play in assuring that state authorities comply with both the letter and the spirit of the Constitution and laws of the United States in cases where religious liberty is at stake.

Because the Nebraska Seven case raises questions concerning the denial of equal protection on the basis of religion, as well as the failure of those who administered justice to respect the commands of the federal constitution, a close look at gaps in federal statutory civil rights enforcement authority is also in order. The broader issue of the extent to which it is permissible under the federal constitution for the states to regulate religious institutions in a manner which may hamper their religious mission fits well into the Commission's mandate to be "a national clearinghouse for information concerning discrimination or denial of equal protection on the basis of...religion." A consultation would be an excellent place to start, and would provide valuable information, as well as non-adversarial forum for the airing of divergent viewpoints.

There are no easy answers to the questions posed above, for they raise the delicate question of the "proper" relationship between law and religion. Even a glance into the issues raised by the situation in Nebraska will demonstrate the complexity and breadth of the issues involved. Review of the relevant facts, briefly summarized below, indicates that the situation which gave rise to the Nebraska dispute has not been resolved, but only deferred for the present. Given that the First Amendment lies at the core of the dispute, it is inevitable that the dispute will eventually have to be resolved at the federal level. Commission action would serve to get the debate started and the facts on the table.

III. Facts & Relevant Case Law

It is crucial that the Commission understand that the stakes in cases involving religious schools are of the highest order: Otherwise law-abiding parents have defied the law -- or fled the state -- in order to practice their religion and preserve the integrity of their families; and the state, in turn, has incarcerated parents for contempt of court for refusal to cooperate in a process that can (and sometimes does) lead to criminal charges or loss of the custody of their children for neglect of their education. The Free Exercise claims themselves, if accepted, challenge the accepted professional wisdom respecting the requirements for a "quality" education, and are controversial for that reason. But, on examination, it can be seen that the issues are the same as in any discrimination case: are the state regulations narrowly drawn to effectuate only legitimate state interests, and do they do so? *Compare*, *e.g.*, 42 U.S.C. § 2000e-2(e) (BFOQ requirements of Title VII).

A. "Nebraska Seven"

The "Nebraska Seven" case arose as a result of continued enforcement efforts by the State of Nebraska aimed at assuring compliance with state regulations governing "approval" of schools. In *Nebraska ex rel Douglas v. Faith Baptist Church*, 207 Neb. 802, 301 N.W.2d 571 (1981), *appeal dismissed* 454 U.S. 803 (1981), the Nebraska Supreme Court, rejected a claim that the rules of the Nebraska Department of Education were unconstitutional on their face.

On September 11, 1979, the District Court of Cass County, Nebraska entered a judgment enjoining certain named defendants from "...further operation of a private school or the using of church property for the operation of a private school until such time as they have complied with the Nebraska statutes and the rules and regulations of the Department of Education governing approved schools..." (Order of Injunction dated March 27, 1981). The decision of September 11, 1979 was affirmed by the Nebraska Supreme Court in *Faith Baptist Church* and was the basis for the injunction ordering the school closed. With this injunction began a series of attempts by the State to close down the school or obtain compliance with orders that the school be "approved".

The method chosen was civil contempt proceedings, although criminal prosecution was an alternative. Over the period from March 27, 1981 through the present time, a series of injunctions, orders, hearings, lawsuits by church members, and jailings for refusal to close the school has occurred. Only two of these proceedings will be described here: the contempt proceedings of November, 1983 which resulted in the 92-day incarceration of the "Nebraska Seven",[2] and the order to padlock the school dated October 14, 1982, which resulted in a raid by sheriff's deputies and state patrol officers on the Faith Baptist Church during a prayer service, the physical removal of over sixty ministers from the church, and the padlocking and guarding of the church, inside and out, by armed deputies. A partial trial docket is attached as Exhibit 1.

1) The Contempt Proceedings of November, 1983

On October 27, 1983, the Cass County Attorney, Ronald D. Moravec, sought "orders to show cause" why Raymond Robinson, James

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[2] Of the seven incarcerated individuals, only two had been parties to the original *Faith Baptist Church* litigation.

Glenn, Herman Buchanan, Kenneth Stastny, Larry Nolte, Ralph Liles and David Carlson; and their wives, should not be held in contempt for sending their children to a non-"approved" school.[3/] On November 23, 1983 the seven fathers voluntarily appeared before Cass County Judge Ronald E. Reagan pursuant to the orders. Their wives, also served, did not appear, and bench warrants were issued for their arrest. They were then tried for civil contempt in absentia [Tr: 11-23-83 at 14-15].

The sole charge before the court was the parents' participation in the operation of a non-approved school.[4/] When the hearing commenced, the fathers indicated that they had "had some difficulties in locating counsel" and that they appeared without counsel because they "intend[ed] to use the Fifth Amendment." [R. of 11-23-83 at 5]. Mr. Carlson stated "I do not wish to be a witness against myself, and therefore, I'll claim the Fifth Amendment." [Tr: 11-23-83 at 5-6]. There is no question that admissions regarding the participation in the school could be used as the basis of either a criminal charge (truancy or criminal contempt). Incarceration for civil contempt had already been used against the pastor.

From a reading of the record, it seems clear that the seven fathers were not aware of the proper legal procedure surrounding a claim of Fifth Amendment privilege, or of the significance of their refusal to testify in the face of an order to do so. When the District Attorney sought to question each of the fathers, each claimed the privilege, and each, in turn, was remanded to the Cass County Jail for refusal to answer "until such time as [he] purge[d] himself" by answering the Court's questions. At the close of proceedings on November 23, 1983 (the day before Thanksgiving), the judge noted "that the very earliest the contempt proceedings [sic] could be purged would be December 5 [1983]" because of the Thanksgiving holiday and the fact that he would be attending a judicial seminar out of state. [R. 11-23-83 at 42].

The next hearing was held on December 6, 1983. At that hearing the primary focus was a statement form provided by the Court (see Exhibit 2) which recited the "understanding" of each of the defendants regarding his ability to purge the contempt. It included a space to indicate whether or not he would answer questions and a signature line. The statements made by the men on the court-provided form were taken, in jail, by the sheriff, without counsel present. Ralph Liles' form, a copy of which appears as Exhibit 2, indicated that he "[would] not sign anything without talking to [his] attorney first." When it was made clear that the

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[3/] Contempt citations were also sought against the Pastor, Rev. Everett Sileven, and others. As indicated previously, several of those served had faced prior contempt orders. The rules for approval of schools are summarized in part B and appear as an Exhibit to this memorandum.

[4/] Since only two of the parents, Mr. Liles and Mr. Carlson, were parties to the original lawsuit, it is not accurate to state that the First Amendment rights of the non-parties had been litigated in the Faith Baptist litigation. The question of the court's jurisdiction to compel compliance with an injunction by a non-party with notice of the injunction is a question of Nebraska law which is not addressed here. Where, as here, the basis for the alleged non-compliance is a claim of individual Free Exercise rights, the state law question takes on added significance: refusal by a state court in a contempt proceeding to consider the merits of a federal consitutional claim which has not been litigated as to that person's individual claim arguably denies federal rights without due process of law.

seven would not testify--still basing their refusal on the Fifth Amendment--the court granted the District Attorney's motion to continue the matter [i.e. keep them in jail] "indefinitely until these parties decide that they will comply with this Court's order [to testify]."[5/]

The next hearing was held on December 14, 1983. At this time the incarcerated men were represented by counsel, and a lengthy discussion with the court was had regarding Fifth Amendment claims and relevant Nebraska law. Nothing was resolved, but the judge did make a statement on the record that "nobody's going to be able to use their answers to punish them." The record makes it clear, however, that there was no agreement concerning the legal sufficiency of the purported grant of immunity under Nebraska law. Nevertheless, the judge indicated that "if they don't answer and I order them to, they're going to go right back [to jail]". [R. 12--14-83 at 16, 16-20]. When counsel objected to the questions asked by the District Attorney, the judge ordered them answered. The answers were refused on the basis of the Fifth Amendment, and the men were sent back to jail. Applications for bail pending expedited appeal were denied and the matter was postponed "until further order." The men stayed in jail.

The next hearings were held on January 5-6, 1984. By this time the men had been in jail for 44 days. One of the men, Raymond Robinson, the father of seven children aged 1-12 and a Vietnam veteran, agreed to testify. He admitted that he had sent his children to Faith Christian School, and voluntarily promised not to send his children back to the school until it was approved. On Thursday, February 23, 1984, the remaining incarcerated men were released from jail by agreement with the District Attorney after making the same promise. They had been in jail for 92 days. For the present, the "back of this rebellion" had indeed been broken.

2. The Raid and Padlocking of Faith Baptist Church

On October 14, 1982, the Nebraska District Court (Raymond J. Case, Judge) ordered the school "secured" with padlocks. The pastor of Faith Baptist Church, Everett Sileven, was already in jail serving a 3 month, 17 day sentence for civil contempt (operating the school) which had been imposed on May 5, 1982, to commence on September 1, 1982. According to those interviewed, the events described here took place while negotiations between counsel for the church and the state were going on concerning a settlement.

On the evening of October 14 or 15, 1982 there was a meeting of the steering committee which was advising the church and its pastor. Its members were some 66 pastors of local churches, and they met that evening in the Faith Baptist Church. According to one of the committee's members, the meeting broke up very late, and the pastors decided

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[5/] It is interesting to note that the judge took great pains to justify his actions to the media present in the courtroom. While there is little doubt that legal arguments can be made in support of some of the judge's actions, the transcript itself shows that the incarcerated men did not understand the technically proper way to assert their Fifth Amendment rights, and the judge made no attempt to explain it to them. At the hearing of December 6, 1983, the judge indicated that these individuals had "essentially received immunity" from criminal prosecution, but nowhere does the trial record indicate how or when this alleged immunity was offered. It is also interesting to note a charge made by several individuals I have interviewed regarding out--of-court statements by the judge prior to these hearings to the effect that he was "going to break the back of this rebellion." The charge has not been verified, but, if true, it raises substantial questions of procedural fairness.

to remain in church for a prayer service which lasted until early morning. With the morning came deputy sheriffs and officers of the state highway patrol bearing the order to "secure" the school. The sheriff ordered the ministers out of the church pursuant to the court's order. When they refused on the grounds that they were conducting a prayer service, they were physically removed from the premises. The church and school were then padlocked, and guards were posted both inside and outside the church. According to reports which have not been verified, these events so antagonized church supporters that threats of physical violence began to be heard. The order securing the church was modified, but neither the reasons, nor the event are recorded on the copy of the docket I was able to obtain.(Exhibit 1) A video tape of these events was supplied to the Commission in response to Chairman Pendleton's inquiry in January. It is in the Commission's file.

3. Related Litigation.

Not surprisingly, a number of lawsuits, state and federal, have arisen from the events described above. The Nebraska Supreme Court refused to review the judge's December 14 order on the grounds that it was "not appealable". Habeas Corpus petitions were filed in the Nebraska state courts raising the Fifth Amendment issues, but were delayed due to the district judge's absence and the other county judge's unwillingness to involve himself in the case. Federal habeas corpus petitions were filed with the United States District Court in Lincoln, but were not given expedited hearing. When finally heard, the federal court refused to intervene in the ongoing state proceeding. An appeal to Justice Blackmun of the United States Supreme Court for stay of the December 14 order of Nebraska District Court was rejected on jurisdictional grounds, with the note that "[t]he Fifth Amendment claims made by the applicants did not appear to be insubstantial" 52 U.S.L.W. 3596 (February 21, 1984). By the time the Nebraska judge had returned, the settlement described above had been reached.

The lawsuit arising from the raid on the church was filed in the United States District Court in Lincoln. McCurry v. Tesch, No. 82-L--695. That case resulted in a decision that all the state officials were immune from suit under the federal civil rights laws. The appeal of this decision was argued in the United States Court of Appeals for the Eigth Circuit on February 17, 1984. McCurry v. Tesch, No. 83-291--NE. Additional lawsuits, not described here, raise the many other complex federal and state issues involved in the controversy.

B. Pervasive State Regulation of Church Schools: Religious Freedom and Education.

The case of the "Nebraska Seven" is both a personal tragedy for the parties and the symptom of a growing civil rights controversy. The personal and social dimensions of the civil rights issue are described above. This section deals with the broader Free Exericse policy issues raised by increasingly pervasive government regulation of church schools.

It should be made clear at the outset that there is, indeed, a federal interest in this question: the degree to which the Free Exercise Clause of the First Amendment protects the freedom of parents to choose a religiously oriented education for their children, and the freedom of churches to offer such education without unduly burdensome interference by the state. The stakes in such controversies are high: prosecution of parents for truancy or neglect, loss of custody for neglect based on failure to provide adequate education, and punishment of church officials for educational activities which they view as central to the religious mission of their church. It simply is not possible to designate the controversy either as simply "educational" one and, hence, a "state" issue, or as totally "religious" and, hence, not a matter for proper governmental concern. Rather, the issue is a complex, constitutional controversy involving religion, education, the rights of parents and children, and the perogatives of the state.

The right of parents to educate their children in a manner consistent with their religious beliefs was first recognized by the Supreme Court in Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923) and Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571 (1925). The right was explicity founded on the First Amendment in 1972 in Wisconsin v. Yoder, 406 U.S. 205,92 S.Ct. 1526, 32 L.Ed.2d 15 (1972), a case involving Amish defiance of Wisconsin's compulsory high--school education law.[6]

In Yoder, the Court held that accommodation of Amish objections to "conventional formal education of the type provided by a certified high-school" was required where the state could not demonstrate that the parental decisions would "jeopardize the health or safety of the child, or have a potential for significant social burdens."

> "...[W]hen the interests of parenthood [recognized in Pierce] are combined with a free exercise claim ... more than merely a 'reasonable relation to some purpose within the competency of the State' is required to sustain the validity of the State's requirement under the First Amendment." Wisconsin v. Yoder, 406 U.S. 205, 233-234.

Prior to Yoder, the Court had also made it clear in the Free Exercise context that state must draw its regulations narrowly, and demonstrate that "no alternative forms of regulation would combat [the target] abuses without infringing First Amendment rights." Sherbert v. Verner, 374 U.S. 398, 408, 83 S.Ct. 1790, 1794, 10 L.Ed.2d 965 (1963). The reason, said Justice Brennan, is that "in this highly sensitive constitutional area, 'only the gravest abuses, endangering paramount interests', give occasion for permissible limitation." Id, 374 U.S. at 406, 83 S.Ct. at 1795.

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[6] Prior to Cantwell v. Connecticut, 310 U.S. 296 (1940) and Everson v. Board of Education, 330 U.S. 1 (1947), the Religion Clauses of the First Amendment were construed in accordance with the original intent of the framers of the Constitution and of the Fourteenth Amendment that public policy regarding local religious matters was an issue to be left to the states. For general discussion of the historical and theoretical arguments on this topic, see generally, F.W. O'Brien, Justice Reed and the First Amendment (1958); A.W. Meyer, The Blaine Amendment and the Bill of Rights, 64 Harv.L.Rev. 939 (1951); L.Pfeffer, Church, State and Freedom(1967); L. Pfeffer, God, Caesar and the Constitution (1976).

In keeping with a judicial trend which began in the early 1900's, and which is now known as "substantive due process", the Court decided Pierce and Meyer on "liberty" grounds, without reference to the First Amendment. It is this "liberty," protected by the Fourteenth Amendment which "incorporates" and applies First Amendment limitations to the power of the states. For a general discussion of incorporation and substantive due process, see generally, R. Berger, Government by Judiciary: The Transformation of the Fourteenth Amendment (1977); A. Cox, The Role of the Supreme Court in American Government (1976), C.L. Fairman, Does the Fourteenth Amendment Incorporate the Bill of Rights?, 2 Stan.L.Rev. 5 (1949).

Given these and other precedents limiting government "entanglement" in the internal affairs of churches,[7] it was not surprising that a controversy based on the federal constitution would arise concerning permissible state regulation of church schools. Many states regulate, in great detail, the day-to-day operational aspects of all "approved" or "accredited" schools. The following charts, current to 1981, will show the types of regulation at issue.[8]

AREAS OF PRIVATE RELIGIOUS SCHOOL REGULATION

	Mandatory		Voluntary		Not Regulated		Totals	
	Freq.	Pct.	Freq.	Pct.	Freq.	Pct.	Freq.	Pct.
a. Curriculum	14	28%	17	34%	19	38%	50	100%
b. Staff Qualifications (degree)	10	20%	16	32%	24	48%	50	100%
c. Staff Qualifications (certification)	12	24%	18	36%	20	40%	50	100%
d. Pupil/Teacher Ratio	4	8%	16	32%	30	60%	50	100%
e. Class Size	1	2%	16	32%	33	66%	50	100%
f. Instructional Materials	2	4%	14	28%	34	68%	50	100%
g. Attendance Reports	18	36%	11	22%	21	42%	50	100%
h. Hours per Day Instruction	18	36%	16	32%	16	32%	50	100%
i. Days per Year Instruction	22	44%	13	26%	15	30%	50	100%
j. Health, Fire, and Safety	26	52%	13	26%	11	22%	50	100%
k. Facility Standards	14	28%	16	32%	20	40%	50	100%
Totals	141	26%	166	30%	243	44%	550	100%

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[7] See, *e.g.*, *N.L.R.B. v. Catholic Bishop of Chicago*, 440 U.S. 490, 99 S.Ct. 1313 (1979)(teacher labor contracts); *Serbian Eastern Orthodox Diocese v. Milevojevich*, 426 U.S. 696, 96 S.Ct. 2372 (1976)(internal management and doctrine); *Lemon v. Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105 (1971) (administrative entanglement).

[8] The charts are taken, with permission, from an unpublished doctoral dissertation, C.S. Romans, "State Regulation of Private Schools: 'Compelling State Interest' and the First Amendment," (c)1981, on file at Kent State University, Kent, Ohio (261 pp.) The author has indicated to me that several changes have been made in some states since 1981, but they are not material to this discussion.

SUMMARY OF THE STATES AS TO AREAS
AND EXTENT OF REGULATION

State	Curriculum	Staff Qualifications (College Degree)	Staff Qualifications (State Certification)	Pupil/Teacher Ratio	Class Size	Instructional Materials	Attendance Reports	Hours Per Day Instruction	Days Per Year Instruction	Health, Fire and Safety	Facility Standards
Alabama	M	M	M	M	M	NR	M	M	M	V	V
Alaska	NR	M	NR	NR	NR	NR	NR	NR	NR	NR	NR
Arizona	V	V	V	V	V	V	NR	V	V	NR	NR
Arkansas	V	V	V	V	V	NR	V	V	M	V[1]	V
California	NR	NR	NR	NR	NR	V	NR	NR	NR	M	M
Colorado	NR	NR	NR	NR	NR	NR	NR	NR	M	M*	M*
Connecticut	V	V	V	V	V	V	M	M	M	M	M
Delaware	NR	NR	NR	NR	NR	NR	M	NR	NR	NR	NR
Florida	NR	NR	V	NR	NR	NR	M	M	M	M	V
Georgia	NR	NR	NR	NR	NR	NR	M	NR	NR	M*	NR
Hawaii	M	M	M	NR	NR	NR	M	M	M	M	NR
Idaho	M	M	M	M	M	M	NR	M	M	M	M
Illinois	V	V	NR	NR	NR	NR	NR	V	V	V	V
Indiana	V	V	V	V	V	V	M	M	M	V	V
Iowa[1]	M	NR	M	NR	NR	NR	M	M	M	NR	NR
Kansas	M	M	M	NR	NR	NR	M	M	M	M	NR
Kentucky	NR	NR	NR	NR	NR	NR	NR	M	M	M	NR
Louisiana	V	V	V	V	V	V	M	V	M	M	V
Maine	M	M	M	M	NR	NR	M	M	M	M	M
Maryland	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR
Massachusetts	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR
Michigan	NR	M	M	V	V	V	V	M	M	M	V
Minnesota	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR
Mississippi	V	V	V	V	V	V	NR	V	V	V	V
Missouri	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR
Montana	V	V	V	V	V	V	V	V	V	V	V
Nebraska	M	M	M	M	M	NR	M	M	M	M	M
Nevada	M	NR	NR	M	NR	M	M	M	M	M	M
New Hampshire	M	V	V	NR	NR	NR	M	M	M	M	M
New Jersey	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR
New Mexico	V	V	V	V	V	V	V	V	V	V	V
New York	NR	NR	NR	NR	NR	NR	M	NR	NR	M	NR
North Carolina	NR	NR	NR	NR	NR	NR	NR	NR	NR	M	NR

State	Curriculum	Staff Qualifications (College Degree)	Staff Qualifications (State Certification)	Pupil/Teacher Ratio	Class Size	Instructional Materials	Attendance Reports	Hours Per Day Instruction	Days Per Year Instruction	Health, Fire and Safety	Facility Standards
North Dakota	M	M	M				M	M	M	M	M
Ohio[2]	M	M	M	M	NR	M	M	M	M	M	M
Oklahoma	V	V	V	V	V	V	V	V	V	V	V
Oregon	V	NR	NR	V	V	V	M	V	M	V	V
Pennsylvania	NR	NR	NR	NR	NR	NR	NR	M	M	M*	NR
Rhode Island	M	M	V	NR	NR	NR	M	M	M	M	M
South Carolina	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR
South Dakota	M	M	M	NR	NR	NR	M	M	M	M	M
Tennessee	V	V	V	V	V	V	NR	V	V	V	V
Texas	V	V	NR	NR	NR	NR	NR	NR	NR	M*	M*
Utah	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR
Vermont	NR	NR	NR	NR	NR	NR	NR	NR	NR	M	M
Virginia	V	V	V	V	V	NR	NR	V	V	V	V
Washington	M		M	NR	NR	NR	NR	M	M	M	NR
West Virginia	V		V			V	V	V	V	M	V
Wisconsin	NR	NR	V	NR	NR	NR	NR	NR	NR	M*	M*
Wyoming	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR

*Indicates regulation by a separate department.

1) Health and Fire standards are mandatory through the Health Department and Fire Marshall respectively.

2) See exemption provision applicable to certain religious groups under Iowa, infra p. 153.

3) Minimum standards have been held unconstitutional as applied to religious schools in Ohio, see infra p. 182.

CODE: M = Mandatory

V = Voluntary

NR = Not Regulated

State courts which have applied Yoder to state regulations have reached varying conclusions using varying rationales. See, e.g., Kentucky State Board of Education v. Rudasill, 589 S.W.2d 877 (Ky. 1979)(striking regs, relying on stricter conscience provisions of Kentucky Constitution); Sheridan Road Baptist Church v. State of Michigan, Dept. of Education, No. 80-26205-A (Circuit Court, Ingham County, December 29, 1982) (striking state law)(slip opinion); State ex rel Douglas v. Faith Baptist Church, 207 Neb. 802, 301 N.W.2d 571 (1981)(upholding regulations in face of broad challenge) (case on which "Nebraska Seven" controversy is based); State v. Whisner, 47 Ohio St.2d 181, 351 N.E.2d 750 (1976) (striking regs); State ex rel Nagle v. Olson, 64 Ohio St. 2d 341, 415 N.E.Ld 279 (1989) (extending Whisner). Notable, all the courts have recognized that Yoder applies, but they do not agree on its affect. The most recent federal case directly on point goes both ways.[9] See Bangor Baptist Church v. State of Maine, No. 81-0180-B (D.Me. filed December 20, 1983)(judgment, in part, for parents) and Bangor Baptist Church v. State of Maine, 549 F.Supp. 1208 (D. Me. 1982) (partial summary judgement for state).

The issues in each of these cases are similar, if not identical, and are aptly illustrated by the Nebraska regulations upheld in State ex rel Douglas v. Faith Baptist Church which appear as Exhibit 3 to this memorandum.

The regulations for elementary schools provide, among other things:

1. That teachers must be certificated (003.01F, 004.02c)
2. a definition of "teach[ing]"
3. that schools must be "approved", and that approval is contingent upon compliance with the regulations (001.02, 003.03C)
4. that only "approved" schools meet the requirements of the compulsory attendance law (001.01)
5. the content of the curriculum (004.1C3a-h)
6. the number of teachers and their qualifications (004.02A), as well as minimum percentages to be assigned in specialty areas (004.02D) and pupil/teacher ratios (004.02J)
7. that the principal shall be certificated (004.02H), and is subject to certain restrictions
8. the number of in-service training days for teachers
9. that each school maintain records concerning the number of books, by subject category, in its library; and that a "balanced" collection of books must be maintained see 004.03F2[10]
10. that each school purchase a minimum of "25 new library resources, exclusive of textbooks and encyclopedia, of different titles, per teacher per year ..." (004.03F4);[11]
11. that health and safety standards be maintained.

It has been the consistent charge that regulations such as these are unduly burdensome and, therefore, interfere with the Free Exercise rights of both the churches operating the schools and the parents who choose them. It is also notable that state financial assistance designed to assist compliance

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9/ No attempt has been made to collect other available federal authorities.

10/ Interestingly, the "recommended" percentage of books pertaining to Religion is 1.0%. The largest categories are "Geography, History, Travel, Biography" -- 25.0%; "Fiction and Fairy Tales" -- 20.0%; "Easy Books for Grades 1-3" -- 25.0%. While this breakdown might certainly make some sense for a public school library, it is not too difficult to see why a religious school might have problems with it.

11/ The financial burden of this regulation for a small Christian school is obvious. The state requires the purchase and expenditure of large sums of money, but is constitutionally forbidden to assume any of the cost because the Supreme Court has ruled that the Establishment Clause of the First Amendment forbids it. See e.g., Lemon v. Kurtzman, 403 U.S. 602 (1971) is constitutionally forbidden, even were the schools to desire it. Thus, the church schools must, in order to carry out what they see as their religious mission to educate the children of their members in a religious atmosphere, comply with the same rules which govern public schools. This, in the judgment of the churches, is state interference in one of the central functions and practices of their faith.

The issue joins, then, at the intersection of a concedly valid state interest: quality education, and a First Amendment right: Free Exercise. How we resolve these competing interests, and others equally as pressing to religious believers, are matters of federal policy because the Supreme Court has recognized religious freedom as a basic civil right. The adversarial prpocess is not well-suited to illuminate all the issues, but the investigatory and advisory processes of this Commission are uniquely suited to this purpose.

Conclusion

This memorandum has emphasized the main issues in the controversy which has become known as the "Nebraska situation", but it is important to emphasize that Nebraska is not the only jurisdiction to face the issue. Reports from other states indicate great interest in the outcome in Nebraska, and North Dakota officials were quoted in the last month concerning possible prosecution of a church school in that state. Church institutions other than elementary schools (colleges, hospitals and churches themselves) must also comply with many constitutionally troublesome regulations. Given this situation, it is most unwise for government, state or federal, to permit the appearance of official religious intolerance or insensitivity toward religious freedom when that freedom is a basic civil right. Federal criminal civil rights laws are not easily adapt- able to situations such as these, for they focus primarily on the civil rights problems they were passed to cover: racial intolerance by state officials. Federal civil remedies, e.g., 42 U.S.C. §§ 1983, 1985, appear to be restricted by the immunities of the very officials who are charged with the offense, and the power of the Justice Department to take the sort of direct action available in race cases is not clear. See, e.g., 42 U.S.C. § 2000h-4.

The result of all of this can be devastating to churches. In Nebraska, the "Gover- nor's Christian School Issue" Panel delivered a lengthy report dated January 26, 1984 which concluded, among other things, that "some accommodation to the First Amendment freedom of religion claims of the Christian school supporters must be recognized." (Report at 27) In keeping with their report, they made several recommendations to the Nebraska Unicameral. Each time it has voted to date, the exemptions have failed by a closely-divided vote. A similar delay in granting an exemption for the Amish which was granted resulted in the move- ment of entire families to states which recognized their right to practice their religion. See Exhibit 4. There is, therefore, a need for action. We have gone too far in the protection of religious freedom to ignore these problems. The issues should be investigated and, I submit, this Commission should begin the process.

APPENDIX - E

ENABLING ACT OF CONGRESS, 1864

ENABLING ACT OF CONGRESS

An act to enable the people of Nebraska to form a Constitution and State Government, and for the Admission of such State into the Union on an equal footing with the original States.

[Passed April 19, 1864, U. S. Stat. at Large, vol. 13, p. 47.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of that portion of the territory of Nebraska included in the boundaries hereinafter designated be, and they are hereby, authorized to form for themselves a constitution and state government, with the name aforesaid, which state, when so formed, shall be admitted into the Union as hereinafter provided.

Sec. 2. And be it further enacted, That the said state of Nebraska shall consist of all the territory included within the following boundaries, to-wit: Commencing at a point formed by the intersection of the western boundary of the state of Missouri with the fortieth degree of north latitude; extending thence due west along said fortieth degree of north latitude to a point formed by its intersection with the twenty-fifth degree of longitude west from Washington; thence north along said twenty-fifth degree of longitude to a point formed by its intersection with the forty-first degree of north latitude; thence west along said forty-first degree of north latitude to a point formed by its intersection with the twenty-seventh degree of longitude west from Washington; thence north along said twenty-seventh degree of west longitude to a point formed by its intersection with the forty-third degree of north latitude; thence east along said forty-third degree of north latitude to the Keya Paha river; thence down the middle of the channel of said river, with its meanderings, to its junction with the Niobrara river; thence down the middle of the channel of said Niobrara river, and following the meanderings thereof, to its junction with the Missouri river; thence down the middle of the channel of the said Missouri river, and following the meanderings thereof, to the place of beginning.

Sec. 3. And be it further enacted, That all persons qualified by law to vote for representatives to the general assembly of said territory shall be qualified to be elected; and they are hereby authorized to vote for and choose representatives to form a convention, under such rules and regulations as the Governor of said territory may prescribe, and also to vote upon the acceptance or rejection of such constitution as may be formed by said convention, under such rules and regulations as said convention may prescribe; and if any of said citizens are enlisted in the army of the United States, and are still within said territory, they shall be permitted to vote at their place of rendezvous; and if any are absent from said territory, by reason of their enlistment in the army of the United States, they shall be permitted to vote at their place of service, under the rules and regulations in each case to be prescribed as aforesaid; and the aforesaid representatives to form the aforesaid convention shall be apportioned among the several counties in said territory in proportion to the population as near as may be, and said apportionment shall be made for said territory by the governor, United States district attorney, and chief justice thereof, or any two of them. And the governor of said territory shall, by proclamation, on or before the first Monday of May next, order an election of the representatives aforesaid to be held on the first Monday in June thereafter throughout the territory; and such election shall be conducted in the same manner as is prescribed by the laws of said territory regulating elections therein for members of the house of representatives; and the number of members to said convention shall be the same as now constitute both branches of the legislature of the aforesaid territory.

Sec. 4. And be it further enacted, That the members of the convention thus elected shall meet at the capital of said territory on the first Monday in July next, and after organization shall declare, on behalf of the people of said territory, that they adopt the constitution of the United States; whereupon the said convention shall be, and it is hereby, authorized to form a constitution and state government: Provided, That the constitution when formed shall be republican, and not repugnant to the constitution of the United States and the principles of the Declaration of Independence; And provided further, That said constitution shall provide, by an article forever irrevocable, without the consent of the congress of the United States:

First. That slavery or involuntary servitude shall be forever prohibited in said state.

Second. That perfect toleration of religious sentiment shall be secured, and no inhabitant of said state shall

Third. That the people inhabiting said territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said territory, and that the same shall be and remain at the sole and entire disposition of the United States, and that the lands belonging to citizens of the United States residing without the said state shall never be taxed higher than the land belonging to residents thereof; and that no taxes shall be imposed by said state on lands or property therein belonging to or which may hereafter be purchased by the United States.

Sec. 5. And be it further enacted, That in case a constitution and state government shall be formed for the people of said territory of Nebraska, in compliance with the provisions of this act, that said convention forming the same shall provide by ordinance for submitting said constitution to the people of said state for their ratification or rejection at an election to be held on the second Tuesday in October, one thousand eight hundred and sixty-four, at such places and under such regulations as may be prescribed therein, at which election the qualified voters, as hereinbefore provided, shall vote directly for or against the proposed constitution, and the returns of said election shall be made to the acting governor of the territory, who, together with the United States district attorney and chief justice of the said territory, or any two of them, shall canvass the same, and if a majority of the legal votes shall be cast for said constitution in said proposed state, the said acting governor shall certify the same to the president of the United States, together with a copy of the said constitution and ordinances; whereupon it shall be the duty of the President of the United States to issue his proclamation declaring the state admitted into the Union on an equal footing with the original states, without any further action whatever on the part of congress.

Sec. 6. And be it further enacted, That until the next general census shall be taken said state of Nebraska shall be entitled to one representative in the House of Representatives of the United States, which representative, together with the governor and state and other officers provided for in said constitution, may be elected on the same day a vote is taken for or against the proposed constitution, and state government.

Sec. 7. And be it further enacted, That sections number sixteen and thirty-six in every township, and when such sections have been sold or otherwise disposed of by any act of congress, other lands equivalent thereto, in legal sub-divisions of not less than one quarter-section, and as contiguous as may be, shall be, and are hereby, granted to said state for the support of common schools.

ENABLING ACT OF CONGRESS

Sec. 8. And be it further enacted, That provided the state of Nebraska shall be admitted into the Union in accordance with the foregoing provisions of this act, that twenty entire sections of the unappropriated public lands within said state, to be selected and located by direction of the legislature thereof, on or before the first day of January, Anno Domini eighteen hundred and sixty-eight, shall be and they are hereby granted, in legal subdivisions of not less than one hundred and sixty acres, to said state, for the purpose of erecting public buildings at the capital of said state for legislative and judicial purposes, in such manner as the legislature shall prescribe.

Sec. 9. And be it further enacted, That fifty other entire sections of land, as aforesaid, to be selected and located as aforesaid, in legal subdivisions as aforesaid, shall be, and they are hereby, granted to said state for the purpose of erecting a suitable building for a penitentiary or state prison in the manner aforesaid.

Sec. 10. And be it further enacted, That seventy-two other sections of land shall be set apart and reserved for the use and support of a state university, to be selected in manner as aforesaid, and to be appropriated and applied as the legislature of said state may prescribe for the purpose named, and for no other purpose.

Sec. 11. And be it further enacted, That all salt springs within said state, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to said state for its use, the said land to be selected by the governor thereof, within one year after the admission of the state, and when so selected to be used or disposed of on such terms, conditions and regulations as the legislature shall direct: Provided, That no salt springs or lands, the right whereof is now vested in any individual or individuals, or which hereafter shall be confirmed or adjudged to any individual or individuals, shall, by this act, be granted to said state.

Sec. 12. And be it further enacted, That five per centum of the proceeds of the sales of all public lands lying within said state, which have been or shall be sold by the United States prior or subsequent to the admission of said state into the Union, after deducting all expenses incident to the same, shall be paid to the said state for the support of the common schools.

Sec. 13. And be it further enacted, That from and after the admission of said state of Nebraska into the Union in pursuance of this act, the laws of the United States, not locally inapplicable, shall have the same force and effect within the said state as elsewhere within the

United States; and said state shall constitute one judicial district, and be called the district of Nebraska.

Sec. 14. And be it further enacted, That any unexpended balance of the appropriations for said territorial legislative expenses of Nebraska remaining for the fiscal years eighteen hundred and sixty-three and eighteen hundred and sixty-four, or so much thereof as may be necessary shall be applied to and used for defraying the expenses of said convention and for the payment of the members thereof, under the same rules, regulations and rates as are now provided by law for the payment of the territorial legislature.

Approved, April 19, 1864.

APPENDIX - F

STUDENT TEST SCORES

PSYCHOLOGICAL RESOURCES GROUP
CECIL R. REYNOLDS, Ph. D.
Child, School, and Consulting Psychology

806 E. 25th St.
Br , Texas 77801
3) 775-7571

3607 Stonehaven Drive
San Antonio, Texas 78230
(512) 699-0097

CECIL R. REYNOLDS, Ph. D., Psychologist
DANEEN A. MILAM, Ph. D., Psychological Associate
MICHAEL J. ASH, Ph. D., Psychologist

September 4, 1982

Mr. Richard Moore
Gibbs and Craze
6929 West 130th Street
Suite 600
Cleveland, Ohio 44130

Dear Mr. Moore:

At your request, I visited Faith Christian School in Louisville, Nebraska, on July 24, 1982. While there I supervised and observed the administration of the California Achievement Test to the students who were present. In addition to observing the actual test administration, I also taped random administrations for later review to ensure the accuracy of my on-site judgment.

At the end of the day, I collected all test materials and brought them back to my office to be scored. Initial scoring was completed by my staff with periodic checks by myself to determine that scoring was accurate and according to the instructions provided by the maker of the test. I am now prepared to report on this testing.

All tests were administered in a manner consistent with the instructions and directions provided by the test maker. The students received no extra help or other undue benefits from their teachers. The test administration was quite comparable to what would typically occur in the public schools.

Appended to this report as Table 1 is a summary of the results of the testing. As you will see, FCS students scored 7 mos. beyond the expected score for a comparably aged goup of public school students in Language (capitalization, punctuation, word usage, and spelling), 9 mos. ahead in Mathematics, and a full year ahead of a comparable public school group in Reading. These averages provide excellent evidence of the quality of basic education these children are receiving.

While at FCS, I also administered a personality scale known as the Revised Children's Manifest Anxiety Scale or RCMAS. This scale is recognized as a measure of general emotional mental health of children and is also related to later development of self-concept and behavior problems. A high score on this test indicates pathology. The average score of FCS students was 15.25 which, while higher than other christian schools, is almost exactly at the mean for children in the United States-at-large. Thus, FCS students are at no higher risk than other children for emotional problems and are comparable to public school children in this regard.

If I can provide further or more detailed information regarding this testing, please let me know.

Sincerely,

Cecil R. Reynolds, Ph.D.
Psychologist

Table 1

Expected and Obtained Scores of Faith Christian School Students
(Louisville, NE) on the California Achievement Test: July, 1982

Students	Expected Grade Equivalent for Age	Language Obtained	Language O-E[a]	Mathematics Obtained	Mathematics O-E	Reading Obtained	Reading O-E
Tracie Robinson	2.4	4.0	+1.6	4.4	+2.0	4.1	+1.7
Rachel Preis	2.2	4.0	+1.8	3.1	+0.9	3.5	+1.3
Laura Stastny	1.9	2.3	+0.4	2.7	+0.8	2.8	+0.9
LeAnn Buchanan	2.8	4.4	+1.6	4.2	+1.4	4.6	+1.7
Glenn Lance	0.8	3.4	+2.6	2.5	+1.7	3.0	+2.2
Karen Liles	4.6	5.0	+0.4	6.6	+2.0	6.6	+2.0
Rachel Robinson	4.6	4.4	-0.2	5.0	+0.4	5.3	+0.7
Jeff Donaldson	9.9	10.3	+0.4	11.5	+1.6	10.4	+0.5
Keri Robinson	4.0	5.7	+1.7	4.6	+0.6	6.4	+2.4
Jon Wolte	4.4	3.2	-1.2	4.5	+0.1	3.1	-1.3
David Vogt	13.4	>14.0	+0.6[b]	>14.0	+0.6[b]	>14.0	+0.6[b]
Lisa Donaldson	6.9	7.0	+0.1	6.7	-0.2	7.3	+0.4
Liz Stastny	7.2	5.8	-1.4	5.8	-1.4	5.7	-1.5
Laura Donaldson	8.3	9.3	+1.0	8.8	+0.5	9.6	+1.3
Dennis Hagemann	12.2	13.2	+1.0	>14.0	+1.8[b]	>14.0	+1.8[b]
Average	5.7	6.4	+0.7	6.6	+0.9	6.7	+1.0

[a] Obtained score minus the expected score for age.

[b] Student scored beyond the upper limit of the test.

APPENDIX - G

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.

[ARTICLE I]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

[ARTICLE II]

A well regulated Militia, being necessary to the security of a free State the right of the people to keep and bear Arms, shall not be infringed.

[ARTICLE III]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

[ARTICLE IV]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[ARTICLE V]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX - H

NEBRASKA BILL OF RIGHTS

1

CONSTITUTION OF THE STATE OF NEBRASKA

of 1875,

AND SUBSEQUENT AMENDMENTS

PREAMBLE. We, the people, grateful to Almighty God for our freedom, do ordain and establish the following declaration of rights and frame of government, as the Constitution of the State of Nebraska.

ARTICLE I—BILL OF RIGHTS

Section 1. All persons are by nature free and independent, and have certain inherent and inalienable rights; among these are life, liberty and the pursuit of happiness. To secure these rights, and the protection of property, governments are instituted among people, deriving their just powers from the consent of the governed.

Sec. 2. There shall be neither slavery nor involuntary servitude in this state, otherwise than for punishment of crime, whereof the party shall have been duly convicted.

Sec. 3. No person shall be deprived of life, liberty, or property, without due process of law.

Sec. 4. All persons have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No person shall be compelled to attend, erect or support any place of worship against his consent, and no preference shall be given by law to any religious society, nor shall any interference with the rights of conscience be permitted. No religious test shall be required as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious beliefs; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the Legislature to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

Sec. 5. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty; and in all trials for libel, both civil and criminal, the truth when published with good motives, and for justifiable ends, shall be a sufficient defense.

Sec. 6. The right of trial by jury shall remain inviolate, but the Legislature may authorize trial by a jury of a less number than twelve in courts inferior to the District Court, and may by general law authorize a verdict in civil cases in any court by not less than five-sixths of the section 79-1529, but shall be allowed to retain his or her accumulated contribution in the system and continue to become vested in the state's accumulated contribution as well as the State Employees Retirement System according to the following:

(a) The years of participation in the School Retirement System before an election is made as provided in this act plus the years of participation in the State Employees Retirement System after the election is made as provided in this act, shall both be credited toward compliance with the five-year service requirement provided under section 79-1522.

(b) The years of participation in the School Retirement System before the election is made as provided in this act plus the years of participation in the State Employees Retirement System after the election is made as provided in this act shall both be credited toward compliance with section 84-1321.

Source: Laws 1980, LB 818, § 2.

Note: "This act" includes sections 79-1510, 79-1565, and 84-1301.

ARTICLE 16

JUNIOR COLLEGES

Chapter 79, article 16. Repealed. Laws 1975, LB 344, § 30.

ARTICLE 17

PRIVATE, DENOMINATIONAL AND PAROCHIAL SCHOOLS

Cross Reference

Water furnished free by cities of metropolitan class, see section 14-1024.

Section.

79-1701. Private, denominational, or parochial schools; laws applicable.

79-1702. Repealed. Laws 1971, LB 292, § 22.

79-1703. Private, denominational, or parochial schools; religious instruction authorized.

79-1704. Private, denominational, or parochial schools; management and control.

79-1705. Private, denominational, or parochial schools; inspection by county superintendent, superintendent of schools or other public school official; when required.

79-1706. Private, denominational, or parochial schools; nonconformity with school law; penalty.

79-1707. Violations; penalty.

79-1701. Private, denominational, or parochial schools; laws applicable. All private, denominational, and parochial schools in the State of Nebraska, and all teachers employed or giving instruction therein, shall be subject to and governed by the provisions of the general school laws of the state so far as the same apply to grades, qualifications, and certification of teachers and promotion of pupils. All private, denominational, and parochial schools shall have adequate equipment and supplies, and shall be graded the same and shall have courses of study for each grade conducted therein, substantially the same as those given in the public schools where the children attending would attend in the absence of such private, denominational, or parochial schools.

Source: Laws 1919, c. 155, § 1, p. 346; Laws 1921, c. 53, § 1(h), p. 230; C.S.1922, § 6508f; C.S.1929, § 79-1906; R.S.1943, § 79-1913; Laws 1949, c. 256, § 506, p. 864.

Requirement of minimal school standards did not infringe upon constitutional rights of parents of school children. Meyerkorth v. State, 173 Neb. 889, 115 N.W.2d 585.

79-1702. Repealed. Laws 1971, LB 292, § 22.

79-1703. Private, denominational, or parochial schools; religious instruction authorized. Nothing in sections 79-1701 to 79-1704 contained shall be so construed as to interfere with religious instruction in any private, denominational, or parochial school.

Source: Laws 1919, c. 155, § 3, p. 349; Laws 1921, c. 53, § 1(j), p. 230; C.S.1922, § 6508h; C.S.1929, § 79-1908; R.S.1943, § 79-1915; Laws 1949, c. 256, § 508, p. 864.

79-1704. Private, denominational, or parochial schools; management and control. For the purposes of sections 79-1701 to 79-1704 the owner or governing board of any private, denominational, or parochial school shall have authority to select and purchase textbooks, equipment, and supplies, to employ teachers, and to have and exercise the general management of the school, subject to the provisions of said sections.

Source: Laws 1919, c. 155, § 4, p. 349; Laws 1921, c. 53, § 1(k), p. 230; C.S.1922, § 6508i; C.S.1929, § 79-1909; R.S.1943, § 79-1916; Laws 1949, c. 256, § 509, p. 864.

79-1705. Private, denominational, or parochial schools; inspection by county superintendent, superintendent of schools or other public school official; when required. The county superintendent in first-class school districts, or the superintendent of schools in all other districts, where any private, denominational, or parochial school not otherwise inspected by an area or diocesan representative holding either a Nebraska Administrative and Supervisory Certificate or a Nebraska Professional Administrative and Supervisory Certificate is located, shall inspect such schools and report to the proper officers any evidence of failure to observe any of the provisions of sections 79-1701 to

APPENDIX - J

JUDGE RONALD REAGAN'S ORDER, APRIL, 1984

IN THE DISTRICT COURT OF CASS COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,
PAUL L. DOUGLAS, Nebraska
Attorney General; and
RONALD D. MORAVEC, Cass
County Attorney,

Plaintiffs,

-vs-

FAITH BAPTIST CHURCH of
Louisville, Nebraska, a
Corporation; GAITH CHRISTIAN
SCHOOL, Louisville, Nebraska;
EVERETT SILEVEN; EDGAR GILBERT;
TRESSIE SILEVEN; MARTHA GILBERT;
HELEN ALDRICH; RALPH LILES;
KENNETH HEARD; DAVE CARLSON;
and WALTER PETERSON,

Defendants.

DOCKET 24 PAGE 138

PARTIAL TRANSCRIPT OF PROCEEDINGS

VOLUME I - PROCEEDINGS
(Pages 1 to 8, incl.)

Proceedings had before the HONORABLE RONALD E. REAGAN, JUDGE, at Plattsmouth, Nebraska, on April 26, 1984.

Vicky Nickeson, RPR
Official Court Reporter
Plattsmouth, NE 68048

CERTIFICATE

I, Vicky Nickeson, Official Court Reporter in the district court of Nebraska for the second judicial district, do hereby certify that the within and following partial transcript contains all the evidence requested to be transcribed by me, and the rulings of the Court thereon, from the proceedings had in or at the trial of the foregoing cause in said court; and that said transcript is a correct and complete transcription of the evidence requested to be ttanscribed from the record made at the time of said proceedings or trial.

Dated this 30th day of April, 1984.

Vicky Nickeson
Official Court Reporter

(On the 26th day of April, 1984, in the District Court of Cass County, Nebraska, before the HONORABLE RONALD E. REAGAN, Judge, the following requested proceedings were had:)

THE COURT: The credibility of the witness Sileven is really negligible for several reasons. And I'm sure a full bill of exceptions of his testimony would more specifically point out other incidents, but I was able to pick up two that were glaring. And that was on direct examination, he immediately testified he was aware that the school was opened in 1983 in violation of the court order. The court order required it not to be open absent compliance and approval by the State Department of Regulations (sic). And later on in his testimony when he's still under the same oath, he testified that he thought the school was in compliance. Those are directly contradictory statements. And they quite obviously were brought up to meet the exigencies of the circumstances.

He further testified on direct examination that he did not use the term "school", but that it was a week day educational ministry. And yet not 30 minutes later on redirect examination, in a question posed by the County Attorney, in answering that question Mr. Sileven used the term "our school" twice and used the term "school" once, referring to the Faith Baptist School.

Willful contempt -- Willful, under Nebraska statutes, Nebraska case law, simply means intentional and with knowledge. There is no question but what the defendant Sileven violated the injunction and order of this Court in August, September, October and November of 1983. And there's no question beyond a reasonable doubt that that violation was willful.

The adjudication is therefore made at this time that the defendant Sileven was in willful contempt of the court order in the fall of 1983, as alleged in the motion of the County Attorney for contempt proceedings.

In accordance with the bench conference and the joint motion made by counsel, the bench warrant for Mrs. Schmidt is withdrawn and the motion to dismiss the contempt proceedings is granted.

I will now hear any statements that counsel wish to make on sanctions to be imposed on the contempt proceedings. These sanctions are punitive in nature for past violations of the court order. State wish to be heard?

(At this point, arguments were made by Mr. Moravec and Mr. Gibbs.)

THE COURT: It's mine to determine now, and I guess whatever decision I reach will promote comments pro and con. And I recognize that that's a particular thing that comes with the office that I hold. Mr. Moravec has already taken some of my thunder because I pulled out 212 Neb. 830 which was the Sileven versus Tesch decision when the three month or four month jail sentence was ultimately appealed by virtue of a habeas corpus proceeding. I have in front of me an individual who says his faith demands him to be obedient, who must keep his sacred conscience before God, and yet has now been adjudicated guilty for the fifth time of willfully violating an order of the Court. And as the Chief Justice said in his opinion, the extent to which the state must set aside its laws in order to accommodate religious beliefs is not to be determined under our form of government by the individual, but rather by the Court.

Freedom of religion in the First Amendment is no different from freedom of speech and is no different from freedom of the press. It's not absolute. Simply because you have freedom of speech, as the old legal scholar said, doesn't give you the right to shout "fire" in a crowded theater. And freedom of religion as an individual determines it does not give him the right, or them the right, whatever their numbers may be, to violate the laws, including court orders of the State of Nebraska that have been enacted for the benefit of all citizens.

And I suppose this will sound cruel, but there was an answer to Sileven's problems. After the Nebraska Supreme Court ruled and the United States Supreme Court ruled, you could have left. You could pick up and leave. If there are states that choose not to have those conditions and those considerations for the education of their children, then go to them.

To be perfectly frank, my initial reaction was that if he was adjudicated in willful contempt of the court, that he shouldn't spend the 93 or 94 days in jail, but that he should probably spend a day for every individual that was in jail, which is 585 days, if I counted them correct. With Mr. Moravec's recommendation, now I feel that maybe that's a little too harsh. But by the same token, he comes in today -- rules and laws and orders that have been laid down in this case and others for the benefit of the children of this state, our minds of the future, he comes in today and is still violating them.

If there is one child that is kept out of school and kept at home in the next month and a half, and by virtue of that does not reach his or her full potential in life, I'd suggest that he in fact has committed a crime that is hideous. Now the children are at home with their parents. They have no formal schooling. And I take it that that's how it will be until July or August or September, they'll not be in any school.

So he will hold the keys to the jail in some fashion in the order that I'm going to enter. At least for the next week or so. If the Court can be assured that each and every child that was in the Faith Christian School is enrolled in an approved -- a school approved by the Nebraska Department of Education, not necessarily a public school, it can be a private school, but it must be approved.

The previous sanction in this case is a punitive sanction and was four months. The sanction I impose today is eight months. I will indicate at this time from the bench that the time commences immediately. But if I'm assured of those things relating to the children, I will then release him from jail and he will return on September 1st to complete the sentence. At that time, assuming that the school is in compliance, I would approve a work release program that would enable him to leave the jail each day to not only operate the school, but also serve as pastor to his congregation. If he furnishes proof and satisfaction to the Court that the children are enrolled in an approved school, and I'm speaking now of the next week or so, counsel, and he is released, that release will be conditioned upon the posting of a $10,000.00 bond for his reappearance on September 1st.

Although I believe it would not show as a matter of record, various letters and documents mailed to me, I think, as well as the County Attorney, indicated that during the last incarceration the defendant Sileven authored an article and ultimately marketed autographed copies of it for a donation of $20.00 or more. That's perfectly within his rights to do on his own time; but this sanction, Sheriff Tesch, his incarceration to jail, he will not be provided writing or recording materials except as may be needed for personal correspondence.

The tragedy of this whole thing is the victims are your children.

Anything more, Mr. Moravec?

MR. MORAVEC: No, Your Honor.

THE COURT: Mr. Craze or Mr. Gibbs?

MR. GIBBS: One moment, Your Honor. Your Honor, may we ask one request? Could we have 10 or 15 minutes with our client in the juyr room before the sheriff takes him over to the ---

THE COURT: You may, sir.

MR. GIBBS: Or we'll take him over.

THE COURT: Adjourned.

* * * * * * * *

(End of Proceedings)

APPENDIX - K

JUDGE CASE'S ORDER, APRIL 29, 1979

FILED
DISTRICT COURT
CASS COUNTY, NEBR.
SEP 11 PM 1:25
RALPH E. BECKMAN
CLERK

IN THE DISTRICT COURT OF CASS COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel)
PAUL L. DOUGLAS, Nebraska)
Attorney General and)
RONALD D. MORAVEC, Cass) Docket 24 Page 138
County Attorney,)
)
Plaintiff,)
)
-vs-)
)
FAITH BAPTIST CHURCH of)
Louisville, Nebraska, a) JUDGMENT
Corporation; FAITH CHRISTIAN)
SCHOOL, Louisville, Nebraska;)
EVERETT SILEVEN; EDGAR)
GILBERT; TRESSIE SILEVEN;)
MARTHA GILBERT; HELEN ALDRICH;)
RALPH LILES; KENNETH HEARD;)
DAVE CARLSON; and WALTER)
PETERSON,)
)
Defendants.)

Now on the 16th day of July, 1979, the above entitled came before the Court for hearing on the merits. For the purposes of the hearing the plaintiff State was present by James F. Begley, Deputy County Attorney and Ronald D. Moravec, County Attorney of Cass County, Nebraska. The defendants were present by their counsel, Charles Craze of Cleveland, Ohio, and Gary Dunlap of Milford, Nebraska.

Evidence was adduced over a period of three days, the parties resting on the 18th of July. Counsel agreed to submit arguments in the form of briefs, the same being permitted by the Court with the plaintiff being limited to three weeks from the 18th and the defendants to have a period of ten days thereafter in which to file a reply brief.

The Court having received and read the briefs and being well and fully advised in the premises finds:

1. That the defendant Faith Baptist Church, through its officers and directors, is conducting a private school in Louisville, Cass County, Nebraska;

2. That said school is being operated in violation of the rules and regulations of the Department of Education and the statutes of the State of Nebraska in that neither the superintendent nor the principal thereof hold a Nebraska administrative and supervisory certificate;

3. That the defendants Tressie Sileven, Martha Gilbert and Helen Aldrich are performing the functions of teachers in said school without holding a Nebraska teaching certificate as required by law;

4. That none of the administrators or teachers have filed certificates with the county superintendent of Cass County, Nebraska, as required by law;

5. That the administrators of said school have failed to file a fall approval report in each of the years that the school has been operated in violation of the rules and regulations of the Department of Education;

6. That none of the individual defendants who are teaching in the school have filed a complete transcript of their college credits as required by the rules and regulations of the Department of Education;

7. That the defendant Faith Baptist Church and its officers, to-wit: Reverend Everett Sileven, Reverend Edgar Gilbert, Kenneth Heard and Dave Carlson have failed to seek initial approval status as an approved school system as required by the rules and regulations of the Department of Education;

8. That each of the individual defendants in concert or

individually have generally failed to comply with the school laws of the State of Nebraska in the operation of a private school and that an injunction should be granted in accordance with the prayer of the petition.

IT IS THEREFORE ORDERED, ADJUDGED AND CONSIDERED by the Court that the Faith Baptist Church together with the president thereof, Reverend Everett Sileven, and Reverend Edgar Gilbert, the defendants Tressie Sileven, Martha Gilbert, Helen Aldrich, Kenneth Heard and Dave Carlson be and each of them are hereby enjoined from further operation of a private school or the using of church property for the operation of a private school until such time as they have complied with the Nebraska statutes and the rules and regulations of the Department of Education governing approved schools.

BY THE COURT:

Raymond J. Case

District Judge

MODEL LEGISLATION FOR RELIGIOUS LIBERTY ACT

1. No federal, state, or local government shall define, classify, tax, license, approve, certify, restrain or restrict or otherwise infringe the practice of any sincerely held religious belief of any citizen of the United States.
2. There are no compelling state interests that supercedes the right of individual citizens to practice their religious beliefs.
3. Religious beliefs shall be defined by the individual citizen and no citizen's religious beliefs must conform to those of another, to be protected from the government and its agencies.
4. This Act in no way diminishes the ability of government, at all levels, to punish crime as defined under the common law.

Senator HATCH. Thank you both for being here. We appreciate it.

We will now ask Rev. Charles Bergstrom, who is executive director of the Office for Government Affairs of the Lutheran Council in the United States of America, to come to the witness table.

Reverend Bergstrom has provided helpful testimony to the Judiciary Committee in the past, and we are extremely happy to have him with us today.

Reverend Bergstrom, we respect you, and we look forward to taking your testimony, and you have indicated before this hearing that you hope we will hold some additional hearings, as well, and I do not know whether we will be able to, but we will certainly give every consideration to your request.

We are glad to take your testimony.

STATEMENTS OF REV. CHARLES V. BERGSTROM, EXECUTIVE DIRECTOR, OFFICE OF GOVERNMENTAL AFFAIRS, LUTHERAN COUNCIL IN THE UNITED STATES OF AMERICA, WASHINGTON, DC

Reverend BERGSTROM. Thank you, Senator.

I should like to make an official request that four other brief pieces be added to the testimony. One would be a copy of "The Nature of the Church and its Relationship to Government," which is referred to in my statement.

My testimony before OMB hearings in the House, and testimony of recent weeks before the Denton committee on S. 1405, which had to do with advocacy, and a letter which we sent to Mr. Chapoton of IRS, after some 7 years of effort to work with them, I think a copy of that might be helpful to see the long-term battle on that issue.

Senator HATCH. Without objection, we will put all of these matters into the record.

Reverend BERGSTROM. I feel like I may be the voice in the wilderness here this morning; on the other hand, I feel it is an important voice, to balance some of the things that have already been said.

Lutherans have a deep sense of understanding relationships of church and state, and we call that "institutional separation and functional interaction." We say that because we believe that Government is also godly; it is not separated from religion or God; it is a part of God's great work. That understanding is based upon our scriptural interpretation.

So we cannot oversimplify these controversial cases. Each of them has to be looked at in its given situation. The church cannot use the Government to evangelize or to gain converts nor can Government do the things as indicated already that may be wrong in defining the church's ministry.

The mainline churches have had problems not only my particular denomination but others also, on an issue related to the term "integrated auxiliary." This is an IRS issue, in which they have tried to define the ministry of the church by excluding some of our agencies and schools.

I do not believe the IRS is a terrorist organization as Mr. Godwin claimed, they sure are stubborn, and I would hope that this particular committee, and others, Senator, might be able to bring them to consultation, to sit down and take a good look at these definitions, to see if it could not be worked out on the basis of commonsense. These are not religious organizations taking advantage of the Government, but they do want to define their own ministry. The letter to IRS is included, as I have indicated.

The whole question of lobby disclosure and the right of churches to carry out advocacy programs, the terrible proposals in Circular A-122 in OMB last year, and S. 1405, which tried to narrow the definition of advocacy for religion are all indications of church-state tension.

The picture of regulations which I have gained being in my office over 7 years is a picture of erratic Government activity rather than evil attacks. I do not see any great plot on the part of Government to overcome religion. I see some failures on the part of both church and Government leaders. I see people in Government who do not really understand the deep feeling that clergy and others have about their faith in God and what that means in its expression.

The private school desegregation issue is not quite as simple as it may look. If we are to define what our schools are to do, and want that to be a religious definition, that runs head on into the matter of equality of all of God's people. I would hope that religious people would be as deeply concerned about laws that would give freedom and equal rights to all people as well as the right of the religious organizations.

Certification of teachers in Nebraska is accepted as a good process by the Lutheran Churches there. But it seems to me a lot of things on both sides could have been done differently in this particular case you just heard about.

Some people call Social Security a great evil. Many of us feel it is a fine insurance program for people we long neglected, particularly the laity in our churches. We have some questions about some of these activities of the IRS, CIA, and FBI, but we feel that they could be handled by such discussion as you have initiated in these hearings. Congressman Dymally in the House has also asked for similar kinds of discussion. People for the American Way is an organization seeking to bring about discussion of our diversities. The American Civil Liberties Union, and other organizations, have a long history of defending first amendment rights in important cases that are not as eloquently described by the media as some of the cases you have here this morning.

In 1979, the Lutheran Churches had a 9-day consultation on some of these issues to which I have already referred. In 1981, 90 percent of the religious bodies of this country gathered together in Chevy Chase to take a look at the incursions of Government into church affairs. That will be followed up by another interreligious consultation in September of this year. And just a couple of weeks ago I was with another diversified group at Harvard University taking a look at some of these issues.

So I think that there needs to be a matter of understanding and give and take in this kind of interchange. I have not practiced law in a long list of the States, and I am always interested in learning from the two learned attorneys that we had speak to us this morning; however, it is not only the Government that takes onto itself a mantle of judgment, sometimes the church tries to do that. There has to be a kind of balance in the understanding of that reality. To have Congress write new laws does not mean, Senator, that they necessarily will do any better than the Supreme Court in pleasing people.

There are parents who mistreat children, and we need good laws to make sure that child abuse does not happen. So we need to take a good look at all ramifications of the issues that are before us.

I would like to touch——

Senator HATCH. There is one difference, however, when Congress writes the laws, they are doing it as elected representatives of the people, they could be thrown out. When the Supreme Court writes the laws they are doing it as the closest thing to Godhead on this Earth; and that is that nobody can question what they have to say.

Maybe that was an irreligious comment, I better be careful of what I am saying, but without question, there is a real difference between the two.

Reverend BERGSTROM. I was talking about the value and the goodness of the particular legislation, or judicial decisions.

I would like to point to something that is more realistic to some of us in Washington, and that is the fact that religious people are divided, and there needs to be a great deal more of conversation between their organizations. There are 40 offices like mine here in Washington, and some of us have had some deep concerns about President Reagan's endorsement of the fundamentalists when he was campaigning in August 1980. That concern has deepened because of the theology of some of those people.

Paul Weyrich talks about "Christianizing America." Jerry Falwell talks about the good days "when there will be no more public schools, but they will all be Christian schools." There are all kinds of statements that come from that group of fundamentalists.

And in the meantime, Senator, the mainline church groups have had very little access to the administration. We would hope that that could improve and change. I have a series of letters sent as chairman of the interreligious coalition I mentioned trying unsuccessfully to initiate that kind of interchange, not just for my church, but for 40 Protestant, Catholic, and Jewish groups who work together here in the Nation's Capital.

The issues of abortion, school prayer, and tuition tax credits are important and difficult moral issues. Every issue that you face, and every decision, of course, has that type of morality to it. School prayers is not an issue between the liberals and the nonbelievers; it is really from the depths of faith that many of us have opposed any kind of religious gathering in our public schools. We believe that the Supreme Court decisions were good; that polls are very difficult to answer and to respond to when it comes to prayer; that the prayers in Congress are not the same as a 6-year-old child singing hymns in the classroom; where he has to be; and that we should object also to prayers being so watered down, as Senator Leahy indicated, that they would have no meaning at all. That trivializes prayer.

But beyond all of that, I come back to my original point, that God is involved in all of this, sir. He is involved in public education. I do not feel that a Christian school, run by any one of us as a clergy person, is necessarily any holier than the public schools where I was educated in Illinois.

We need to make very clear that these distinctions are not helpful if those of us who claim we are religious, therefore claim to be apart from the Government. Every one of us is a part of the Government. So we cannot separate ourselves by blaming those who make decisions. Most of us are lazy citizens, and so often have held so tightly to our religious views that we fail to address broader societal questions.

I describe myself as a born again, Evangelical Lutheran Christian; there is no other way to get into the Christian church. But I am just as deeply concerned for justice, and I think God's will is that justice be done on the part of the Government, and that religious people work for justice, not to bring salvation into the Government arena or to bring ideas of judging people as to how they believe in God, on the basis of how they might vote.

As an example, I recently received a letter, which is headed "Christians to Reelect President Reagan." Let me read just one paragraph.

> Ted Kennedy, Fritz Mondale, Alan Cranston are ultraliberals who put the values of secular humanism above the values of Christians like you.

This is signed by Gary Jarman. I think that kind of mail shows the need for some face-to-face discussion about how all of us may believe in God, and there might be some Christians that might vote for a Democrat in the coming election, and also, of course for some Republicans. That spirit needs to be pointed out in terms of all of our gathering together as people.

I quote a very good source in one portion of my report, Dr. Martin Luther. I would close by reading a brief statement by the Lutheran Bishops which was written in 1980:

> It is a misuse of terms to describe government politics as Godless or profane. God rules both the civil and the spiritual dimensions of life. It is unnecessary and unbiblical for any church, group or individual to seek to Christianize the Government, or to label political views of Congress as Christian or religious. It is arrogant to assert that one's position on a political issue is Christian, and that all others are unchristian, immoral or sinful. There is no Christian position. There are Christians and other religious people who hold positions.
>
> God employs reason and power in government for social justice, peace and freedom. Advocacy for social justice is part of the mission of the church, according to Lutheran theology.

Such advocacy may often bring disagreement on issues and votes as to how we strive for justice, but I think understanding and acceptance, and sharing more responsibility for Government as well as for our religions will be very helpful.

Thank you sir.

[Material submitted for the record follows:]

PREPARED STATEMENT OF CHARLES V. BERGSTROM

My name is Charles V. Bergstrom. I serve as Executive Director of the Office for Governmental Affairs, the Lutheran Council in the U.S.A. On behalf of the Council, I would like to express appreciation to this subcommittee for holding hearings to explore in a rational way the areas where church and state are in tension. In giving this testimony, I am speaking on behalf of the three Lutheran church bodies which participate in the Office for Governmental Affairs:

> The American Lutheran Church, headquartered in Minneapolis, Minnesota, composed of 4,900 congregations having approximately 2.4 million U.S. members,
>
> The Lutheran Church in America, headquartered in New York, New York, composed of 5,800 congregations having approximately 2.9 million members in the U.S., and
>
> The Association of Evangelical Lutheran Churches, headquartered in St. Louis, Missouri, composed of 270 congregations having approximately 110,000 U.S. members.

THE PROPER RELATIONSHIP BETWEEN CHURCH AND GOVERNMENT: A LUTHERAN PERSPECTIVE. Many in this nation ground their understanding of the proper relationship between church and state on a somewhat simplistic interpretation of Thomas Jefferson's description of the "wall of separation" between the two institutions; they maintain that this "wall" creates a somewhat static situation in which church and state hygienically operate in their own spheres, never fundamentally affecting or "infecting" each other. But such an understanding of the "wall" does not do justice to the dynamic and continually changing relationship between the two institutions in this country. To echo Chief Justice Burger's 1971 observation, the "wall" is, in practice, more like a "blurred, indistinct and variable barrier."

The Lutheran churches I represent have described their understanding of the proper relationship between church and government in terms of "institutional separation and functional interaction." Thus, the "wall" of institutional separation stands within a grey "zone" of interaction between the two institutions.

Institutional separation. We believe that both government and church have a God-given role in the world. The government is to establish justice, advance human rights, promote peace, and work for the welfare of all in society; the church's mission includes proclaiming the Gospel through preaching, teaching, administration of the sacraments, social service and advocacy on behalf of all members of the social order. Recognizing the distinctive role of each, we believe that they should be separate institutionally, and that one should not usurp the role of the other. Churches should not be in the business of using the coercive power of the state to enforce their versions of what is moral; similarly, the state should not assume the functions of the church in preaching or evangelizing, or determine for the church what is or is not part of its mission.

Even when each is fulfilling its legitimate role, there is a sometimes uneasy balance between the government's responsibility to regulate for the common good and the church's right to free exercise of religion. Generally, Lutheran churches maintain that the government, as one of God's agents, has the authority and power in the secular dimensions of life to ensure that individuals and groups--including religious communities and their agencies--adhere to the civil law. The churches and their agencies are often subject to the same legislative, judicial and administrative provisions which affect other groups in society. But Lutheran churches will claim treatment or consideration by government different from that granted to voluntary, benevolent, eleemosynary and educational nonprofit organizations when necessary to assure free exercise of religion. The claim for special treatment must be well founded--and the government's responses to such claims must be evenhanded, so as not to favor one type of religion or worship over another. We would maintain that government exceeds its authority when it seeks to define, determine or otherwise influence the churches' decisions concerning their nature, mission and ministries, doctrines, worship and other responses to God--except in critical instances, which must be considered on a case by case basis and which may involve church infringements of basic human rights.

Functional Interaction. However, the Lutheran churches maintain that in pursuing a joint concern for the common good, church and government can interact functionally in areas where cooperation assists in the maintenance of good order, the protection and extension of civil rights, the establishment of social justice and equality of opportunity, the promotion of the general welfare and the advancement of the dignity of all persons. This principle underscores the Lutheran view that God rules both the civil and spiritual dimensions of life, making it appropriate for churches and government to relate creatively and responsibly to each other.

In this functional interaction, the government may conclude that efforts and programs of the churches provide services of broad social benefit. In such instances and within the limits of the law, the government may offer and the church may accept funding and various other forms of assistance to furnish the services. Functional interaction also includes the role of the churches in informing persons about, advocating for and speaking publicly on issues and proposals related to social justice and human rights. From the Lutheran perspective, the church has the task of addressing God's Word to its own activities and to the government. And the United States Constitution guarantees the right of the churches to communicate concerns to the public and to the government.

This is our conceptual framework for discussing church-state issues, one which does not provide easy "yes" or "no" answers to the difficult questions about the relationship between the two institutions.

PROBLEMS IN CHURCH-STATE RELATIONS. The fact that we can have a hearing like this, where representatives of religious organizations and government can freely exchange views about the state of religious liberty, says much about the quality of church-state relations in this country. The strong differences of opinion on key issues among various religious groups testifying here reveals the diversity of religious beliefs in this country. It underscores the difficulties in developing one governmental policy or practice which accomodates all religious views and the necessity for government to maintain a truly evenhanded neutrality among all faith groups.

The Lutheran churches have identified a number of areas where church and government are in tension. Often these issues span both Republican and Democratic administrations, and are a by-product of differing understandings of responsibilities and rights of the two institutions. Noting that it is necessary for the churches to clarify for the government their position in this area, the Lutheran churches in 1979 held a consultation on "The Nature of the Church and Its Relationship With Government." It was occasioned by a number of instances in which the Lutheran churches perceived increased government encroachment on the churches' rights--instances which would result in government entanglement in religion and infringement of the free exercise of religion. I would like to have included in the hearing record the report of that consultation, which in more detail describes our conceptual framework and outlines the problems in church/state relations occurring at that time--some of which are of continuing concern. I would like to now focus attention on several current issues, where we see significant church-state difficulties.

Integrated Auxiliaries. From the perspective of the Lutheran churches I represent, one of the most persistent church-state problems relates to the Internal Revenue Service's definition of an "integrated auxiliary" of a church. Through this definition the government is defining by regulation what is, or is not, an integral part of the church's mission.

Prior to 1969, most religious organizations, including churches and their related agencies, were exempted from filing informational returns with the IRS. The Tax Reform Act of 1969, however, stipulated that all organizations exempt from taxation under Section 501(a) of the Tax Code would have to file an annual informational Form 990 return--except churches, "their integrated auxiliaries," conventions and associations of churches, the exclusively religious activities of any religious order and exempt organizations with gross receipts under $5,000 annually. The law involves the reporting of information; no payment of taxes is involved.

The problem for the IRS since 1969 has been to define "integrated auxiliaries," since that term had no legal meaning and no common definition among religious groups. In February 1976, the IRS issued proposed regulations which had the net effect of providing for all churches a single and extremely narrow definition of religious mission. Protests by a number of religious organizations led to some modifications in the "final" regulations issued in January 1977, but the regulations continue to be offensive to our understanding of our mission. Explicitly excluded from the definition of "integrated auxiliaries" are church-related hospitals, orphanages, homes for the elderly, colleges, universities and elementary schools, although elementary and secondary schools are exempt from filing.

The heart of the issue is that the regulation on "integrated auxiliaries" seeks to impose on the churches a definition of "religious" and "church" which the churches cannot accept theologically, one which constitutes an unwarranted intrusion by the government into the affairs of the churches. The narrow definition introduces confusion within the churches and their agencies and institutions. It also leads the government to attempt other intrusions into the activities of the churches and church-related agencies and institutions.

Our churches would probably not object to the disclosure of most of the information required by Form 990 by those agencies and institutions of the church whose ministries appear to have counterparts in the public sphere, if such requirement or disclosure were not predicated upon a denial that those ministries are an integral part of the churches' mission. But the churches do object on principle to having any of their ministries, including their agencies and institutions, be treated as "not religious." These agencies and institutions perform ministries which are essential to the churches' mission and must not be put in a different category from the strictly sacerdotal functions of the churches.

The Lutheran churches, and a wide range of other denominations, have urged the IRS to alter its "integrated auxiliary" definition. When the Reagan administration came into office, additional contacts were made to achieve this end. I would like to include in the hearing record the most recent communication on this issue sent by the Coalition on Internal Revenue Definition of Religious Bodies to Assistant Secretary for Tax Policy John E. Chapoton. In addition, I was one of the members of that coalition that met with representatives of the Vice President's Taskforce on Regulatory Relief. None of this work availed us, and the regulation is still in place.

This may seem like merely a technical issue, but it is vitally important to the Lutheran churches. It is so important that they have challenged this regulation in the courts. A negative decision in the U.S. District Court, District of Minnesota, Fourth Division, is currently being appealed by those church bodies.

Government Efforts to Limit the Church's Ministry of Advocacy. The Lutheran churches firmly believe that advocacy for justice is an integral part of their mission. We have consistently resisted in principle the "substantiality test" currently in the IRS Code, as it applies to the advocacy activities of churches. We would maintain that such a test unfairly penalizes, through the threat of loss of tax exemption, those churches which regard public advocacy as part of their mission. Moreover, the effect of this test is to give preferred status, in violation of the Establishment Clause of the First Amendment, to those churches which do not participate actively in the debate on public policy.

During the last Administration, we were deeply concerned about the lobbying disclosure legislation which was then being considered by Congress. A more detailed explanation of our concerns is found in the consultation report I referred to earlier. During this administration, proposals have been put forward by the Office for Management and Budget and by members of Congress which cause us equal concern. These relate specifically to the advocacy activities of non-profits and their affiliates which receive federal funds. But, like the lobby disclosure proposals which preceded them, the proposed revision of OMB Circular A-122 and legislation, such as S1405, introduced by Sen. Jeremiah Denton, represent a heavy-handed approach to the question of advocacy by non-profits.

The Lutheran churches I represent believe firmly that government funds should be used expressly for the purposes Congress intends. Our social service agencies, which are often channels for federal funds to provide service to the aged, the disabled, refugees and other persons in need, understand the importance of accountability in the use of those funds. The Lutheran churches engage in these supporting activities because social service is part of the church's mission--and in these instances, society benefits when churches and their agencies "functionally interact" with government, assisting the government in carrying out activities it has established to enhance the common good. We realize that we must be held accountable for the use of federal monies--and comply willingly with reasonable accounting and reporting requirements which ensure that that is the case. When our agencies engage in advocacy, which is also part of their mandate, they use their own funds and do not use any governmental funds for that purpose.

But the pending proposals, some of which have grown out of an effort to "defund the left," are overly broad, would have a chilling effect on legitimate communications between non-profits and government, and have no compelling government interest to justify their enactment. I would call your attention to the recent congressional testimony of the U.S. Solicitor General in which he indicated that he had discovered no evidence for the suspicion that, on a widespread basis, federal funds are being abused by non-profits. Last month, we testified on the Denton bill, which would severely restrict our advocacy activity--or force us out of the arena of cooperation with government in service delivery. In addition to the concerns we shared with the non-profit sector generally about the bill, we were concerned that this measure would seriously limit the free exercise of our religion. For example, under that bill, the Lutheran churches could not protest a congressional move to eliminate their tax exemption with their own money without putting the work of an affiliated social service agency providing services to developmentally disabled children in jeopardy of losing its federal funding. I would like to provide for the committee a copy of my testimony on the Denton bill and our statement regarding the related OMB proposal.

To varying degrees, such proposals would restrict the freedom of the church to speak to its members, using its own money, and to petition government--actions which are protected under the U.S. Constitution. Again, it would also favor unconstitutionally those churches which do not consider public advocacy to be part of their mission.

Government Regulation. Lutheran churches have consistently objected to governmental regulation of their educational institutions and social service agencies when such regulation violates due process, exceeds statutory authority, or infringes on First Amendment guarantees. In this process, we emphasize our solidarity with both secular and religious members of the voluntary sector and invoke the Free Exercise clause of the First Amendment as a basis for objection to regulation only when there is a bona fide constitutional question at stake. We do not attempt to insulate the institutional church from legitimate regulation which contributes to the common good by indiscriminately charging violations of religious liberty. The Lutheran churches analyze regulations on a case by case basis and develop positions which reflect their commitment to religious freedom as well as government regulation which protects the public's health, safety and welfare.

For example, on the issue of the IRS' role vis-a-vis private school desegregation, we assert that a religious organization running an educational institution, like other tax-exempt organizations, cannot claim the exempt status and at the same time operate contrary to established public policy on racial discrimination. However, while we would acknowledge the right of the government to revoke the tax exempt status of schools which discriminate, judgments must be made on the basis of facts within a framework of due process. Presumptions on general circumstances or external conditions are inadequate for this purpose. Thus, in 1978, we were in the position of supporting the intent of IRS activity in this area, while vehemently opposing the specific procedure proposed, since it did not meet these criteria; thereafter we supported revised regulations which we felt met our concerns about due process.

This example is illustrative of our approach to dealing with government regulation. Recognizing the government's interest in providing quality education for all children, we generally have no conceptual problem with reasonable certification requirements for our religious schools--as long as those requirements are not capricious or do not restrict the religious freedom of the school. Our social service agencies generally have no problem with state or federal regulations intended to protect the public health, safety and welfare--but they may have serious problems with specific regulations, which may be burdensome, unnecessary, intrusive, or punitive.

Government Establishment of Religion. In recent months, the debate over prayer in public schools has intensified. The Lutheran churches I represent would probably differ from many who will be testifying before this committee, since they have consistently supported the 1962/1963 Supreme Court decisions prohibiting state-mandated prayer and Bible reading in public schools. The Lutheran churches have maintained that such a practice is unnecessary from a religious point of view. We believe that God is active in the educational process; government is fulfilling its legitimate responsibility for universal public education, and we see no need to "put God back in that process" since He has never been removed from it. The responsibility for religious education and worship rests with the family and the church--not the government.

It is important, however, that the schools maintain a wholesome neutrality among religious groups, not favoring one over the other and not denigrating religion generally. Parents and churches need to work closely with local school boards to maintain the quality of education in this and a range of areas. But it is just not appropriate for schools to hold compulsory prayer of any kind, since that would put the state in the position of favoring one sort of religious practice over another--even if that religious practice would be "non-denominational" in character. Many Lutherans would have real problems with their children being encouraged, either directly or indirectly, to pray such "non-denominational" prayers, which they feel would water down the strength of their religious witness-and that of other faith groups. Lutherans, believing that all prayer must be made "in the name of Jesus," would object to having their children daily taught to pray without that understanding. From their theological perspective, non-denomination prayer would hurt the religious development of their children.

From our theological perspective prayer in public school is not necessary and is potentially harmful. From a public policy viewpoint, it causes divisiveness in the community and results in significant restrictions on the freedom of religion of minority faith groups. It is not enough to say that a child can leave the classroom--when adults are well aware of the peer pressure that can undermine even the most careful of parental instruction. Protecting the religious liberty of all students in our public schools, whether they are Lutherans, Mormons, Jews, or members of newer religious sects is vital to the good of the nation as a whole.

Our concerns about the divisiveness and potential infringements of religious liberty which could occur when religious practices are conducted in public schools is the foundation for our reservations about "equal access" legislation. We would assert that religious speech should be afforded the constitutional protection it merits, also in the public schools. And in current court cases, specific instances where freedom of religion may have been abridged are being tested. But we are also concerned that legislative measures designed to remedy such abuses must not be so broadly drawn as to open the door to a range of religious activities being held in schools during the school day--activities which could result in sectarian divisiveness or in a situation where impressionable children could be evangelized or proselytized contrary to the wish of their parents, who are sending them to public schools because of the requirement of the law.

CONCLUSION. There are other church-state issues which are of concern to us, such as IRS/CIA/FBI impersonation of ministers in investigations, situations relating to civil disobedience by church members on issues of conscience, and restrictions on charitable solicitation by local units of government. And our state affiliates, I'm sure, could raise other concerns about church-government relations on the state and local levels. This hearing underscores the importance of continuing dialogue between churches and Congress--and between the churches and such agencies as IRS and OMB-- to develop the groundwork for resolving such difficulties. And that interest is shared by others in the House: I would call your attention to Congressman Dymally's proposal that the House Judiciary Committee conduct hearings to discuss governmental intervention in religious affairs, which would touch on many of the issues I have raised in my testimony.

The interreligious community, as well as the Lutheran churches, are engaged in continuing discussions on these issues. In 1981, 300 delegates attended a two day conference on "Government Intervention in Religious Affairs." More than 90 percent of all of the organized religious groups in this nation sent representatives--the most inclusive religious gathering in the history of the United States. A second conference, sponsored by the National Council of Churches, the Lutheran Council, the National Association of Evangelicals, the Southern Baptist Convention, the Synogogue Council of America and the U.S. Catholic Conference, is scheduled for September. In sharing common concerns, these religious groups have noted that, although some religious prejudice has been overcome, the nation still has a way to go in overcoming such prejudice vis-a-vis newer religious groups. In addition, for many mainline religious groups, tensions in the church-state area often arise from government regulation which may, in specific instances, pose a threat to their carrying out works of mercy and justice. They do not sense a sinister plot against religion by government, but a growing government entanglement in their affairs--an entanglement which sometimes occurs with little reason or cause. In continuing congressional dialogue on church-government tensions, input by those organizations, in addition to those testifying before this committee today, is essential.

A number of other gatherings to discuss this issue, which have been held or which are in the planning stage, may be of interest to this committee. Harvard

University hosted a consultation on June 10-11 which involved representatives of diverse religious groups, academics, and political analysts, among others, to discuss the place of religion in the political process. There was a clear difference in theology--but a clear agreement that churches, in carrying out their mission, should be free to engage in the political process. Often their involvement is undertaken on behalf of persons at the margin of our economic and social system, and is quite different from political lobbying to enhance institutional power. People for the American Way has also sponsored programs to support the diversity of religion and political beliefs safeguarded by the U.S. Constitution.

Government treatment of religious organizations must also be fair and evenhanded. I believe this message must be relayed to President Ronald Reagan and his administration. In August of 1980, candidate Reagan publically endorsed the sponsors of a fundamentalist religious and political rally in Dallas, Texas. That endorsement of their views has continued since his election, as evidenced by his meetings with them and addresses to their various coalitions. However, over the past three and a half years, the channels for communications between mainline religious groups and the White House have been inadequate. Some of the Washington representatives of these church bodies have made several efforts to encourage dialogue similar to that which occurred under previous administrations. I personally raised the issue with Elizabeth Dole, Faith Whittlesey, and Morton Blackwell, who served as religious liaison for the White House at various times. I would encourage the White House to engage in the same sort of serious dialogue being undertaken here this morning--a dialogue which should include conversations with mainline religious leaders.

There are a number of social issues, including abortion and school prayer, which have been widely labelled "moral issues." The nation faces hard decisions in these areas, and moral considerations should be raised in this process. However, it is important that all engaged in discussions--from church leaders, to members of Congress, to the President himself--avoid using the type of "religious" language which denies moral legitimacy to persons or groups who have a different theological perspective--or a different political position on those issues.

The Lutheran churches I represent would maintain that moral considerations must also be raised in the debate over a far wider range of issues than those designated as "moral issues" by the religious right. Our religious beliefs compel us to be involved in issues relating to nuclear disarmament, increased poverty and homelessness, global and domestic hunger, and civil rights. Our stances may differ from those of the current administration--as they at times differed from those of previous administrations. But it would be helpful to church-government relations if the President and others in the various branches of government would acknowledge that religious groups, having different theological perspectives and different sources of information, may legitimately differ with them; this does not make them "duped" or "soft on communism" or "naive."

In dealing with the issue of church-state relations, ~~it is~~ important to remember that the United States is not a Christian nation. The Lutheran churches, unlike the Moral Majority and the Christian Voice, can accept that reality and affirm the tradition of religious freedom based on the U.S. Constitution. They would assert that the government must be careful that its representatives not use their offices to promote a theology which offends the consciences of individuals of different religious faiths. As Dr. Martin Luther once stated, "Secular government has laws which extend no further than to life and property and to external things and relations on earth. For over the soul, God can and will let no one rule but Himself alone. Therefore, where secular power presumes to prescribe laws for the soul, it encroaches on God's government and only misleads and destroys souls." One should not mix these two authorities--the temporal and the spiritual, the courthouse and the church; otherwise the one devours the other and both perish."

Thank you for this opportunity to present our views on the complex issue of church-government relations.

THE NATURE OF THE CHURCH AND ITS RELATIONSHIP WITH GOVERNMENT

A statement with public policy recommendations on church-state issues adopted by the Lutheran Council in the U.S.A.

A. INTRODUCTION

An increasingly complex society has produced growing interdependence and interaction among groups, persons, and resources in the governmental, economic, and voluntary sectors. The government's responsibilities to maintain equity and order have led both the churches and the state into greater contact and, at times, into tension. As governmental bodies seek to perform their roles and the churches seek to fulfill their missions, each needs to be aware of the other's purposes, principles, and methods. In their endeavors, both the churches and the government have the task of formulating and clarifying position statements and guidelines for implementation and application when appropriate.

The Lutheran Council in the USA, a cooperative agency of The American Lutheran Church, Association of Evangelical Lutheran Churches, Lutheran Church in America, and Lutheran Church–Missouri Synod, is aware of rising concern within its participating bodies over governmental activity in matters affecting the churches and their ministries. There are instances in which laws, rulings, and regulatory procedures on the part of government appear to infringe upon the churches and their agencies and institutions. Governmental efforts to define the nature, mission, ministries, and structure of religious organizations are likely to continue. These developments have raised questions within the Lutheran churches about the right and competence of government to define the nature, mission, ministries, and structure of religious bodies.

The Lutheran Council recognizes that an ongoing process of communication within the Lutheran family of churches and with other religious bodies and organizations in the voluntary sector is proper and timely as response is given to the government. Government officials need to be informed about the positions and perspectives of the Lutheran churches.

On these grounds the Lutheran Council convened a consultation on church-state issues which resulted in the following statement and recommendations. The report of the consultation was adopted by the council's 1979 annual meeting on May 16 in Minneapolis.

B. STATEMENT OF AFFIRMATION

1. Church and Government in God's World

God's omnipotent activity in creation is dynamic; that is, it is living, active, and powerful in all human affairs. The structure and polities of civil and Christian communities are determined and arranged by tradition, circumstances, and needs.

Lutherans acknowledge the twofold reign of God, under which Christians live simultaneously. God is ruler of both the world and the church. The church is primarily the agency of the Gospel in the new age of Christ, while the state is primarily the agency of the Law in the old age of Adam.

Given the balance of interests and differing responsibilities of the churches and the government in God's world, the Lutheran churches advocate a relationship between the churches and the government which may be expressed as "institutional separation and functional interaction."

Both the churches and the government are to delineate and describe the proper and responsible extent of their functional interaction in the context of God's rule and the institutional separation of church and state.

2. Institutional Separation

In affirming the principle of separation of church and state, Lutherans in the United States respectfully acknowledge and support the tradition that the churches and the government are to be separate in structure. As the U.S. Constitution provides, government neither establishes nor favors any religion. It also safeguards the rights of all persons and groups in society to the free exercise of their religious beliefs, worship, practices, and organizational arrangements within the laws of morality, human rights, and property. The government is to make no decisions regarding the validity or orthodoxy of any doctrine, recognizing that it is the province of religious groups to state their doctrines, determine their polities, train their leaders, conduct worship, and carry on their mission and ministries without undue interference from or entanglement with government.

a. The Church's Mission

1) The central mission of the church is the proclamation of the Gospel; that is, "the good news" or promise of God that all persons are forgiven by and reconciled with God and one another by grace through faith in Jesus Christ.

2) The church is the fellowship of such forgiven and reconciled persons united in Jesus Christ and guided by the Holy Spirit to be sons and daughters of the Father. In and through that fellowship Christians express their love for, confidence in, and reliance upon God through worship, education, social action, and service.

3) The church is also the people of God called and sent to minister under his authority in his world. God also calls the church to be a creative critic of the social order, an advocate for the needy and distressed, a pioneer in developing and improving services through which care is offered and human dignity is enhanced, and a supportive voice for the establishment and maintenance of good order, justice, and concord. Another mark of the presence of the church in the world is in its ministries involving activities, agencies, and institutions through which the church and society seek to fulfill their goals in mutual respect and cooperation.

4) Lutherans hold that their churches have the responsibility to describe and clarify to their members and to society the mission of the Lutheran churches and to determine, establish, maintain, and alter the various forms through which that mission is expressed and structured.

5) The distinctive mission of the churches includes the proclamation of God's Word in worship, in public preaching, in teaching, in administration of the sacraments, in evangelism, in educational ministries, in social service ministries, and in being advocates of justice for participants in the social order.

6) On the basis of their commitment to him who is both Lord of the church and Lord of the world, Lutheran churches establish, support, operate, and hold accountable their congregations, agencies, institutions, schools, organizations and other appropriate bodies.

7) While church bodies have differing polities, it is fitting to describe them, including their duly constituted agencies, according to their ecclesiastically recognized functions and activities.

8) Lutheran churches have the authority, prerogative, and responsibility to determine and designate persons to be professional church workers, both clergy and lay; to establish criteria for entrance into and continuance in the functions carried on by professional church workers; to create educational institutions for training professional church workers; and to provide for the spiritual, professional, and material support of such persons. Such support extends throughout the preparation for, activity in, and retirement from service in the several ministries of the churches.

9) Lutheran churches have the authority and prerogative to enter into relationships, associations, and organizations with one another; with overseas Lutheran churches and bodies; with other Christian fellowships or other religious groups on regional, national, and international levels; and with voluntary or governmental agencies which the Lutheran churches and other groups deem helpful and fitting to their respective purposes.

b. The Government's Role

1) According to Lutheran theology, the civil government's distinctive calling by God is to maintain peace, to establish justice, to protect and advance human rights, and to promote the general welfare of all persons.

2) As one of God's agents, government has the authority and power in the secular dimensions of life to ensure that individuals and groups, including religious communities and their agencies, adhere to the civil law. The churches and their agencies in the United States are often subject to the same legislative, judicial, and administrative provisions which affect other groups in society. When necessary to assure free exercise of religion, however, Lutheran churches claim treatment or consideration by government different from that granted to voluntary, benevolent, eleemosynary, and educational nonprofit organizations in society.

3) Government enters into relationships, associations, and organizational arrangements with nongovernmental groups, including churches, according to the nation's laws and traditions, in order to fulfill its God-given calling and without compromising or inhibiting the integrity of either the groups or the government.

4) Government exceeds its authority when it defines, determines or otherwise influences the churches' decisions concerning their nature, mission, and ministries, doctrines, worship and other responses to God, except when such decisions by the churches would violate the laws of morality and property or infringe on human rights.

3. Functional Interaction

Lutherans in the United States affirm the principle of functional interaction between the government and religious bodies in areas of mutual endeavor, so that such interaction assists in the maintenance of good order, the protection and extension of civil rights, the establishment of social justice and equality of opportunity, the promotion of the general welfare, and the advancement of the dignity of all persons. This principle underscores the Lutheran view that God rules both the civil and spiritual dimensions of life, making it appropriate for the government and the churches to relate creatively and responsibly to each other.

In this functional interaction, the government may conclude that efforts and programs of the churches provide services of broad social benefit. In such instances and within the limits of the law, the government may offer and the churches may accept various forms of assistance to furnish the services. Functional interaction also includes the role of the churches in informing persons about, advocating for, and speaking publicly on issues and proposals related to social justice and human rights. From the Lutheran perspective, the church has the task of addressing God's Word to its own activities and to government. The U.S. Constitution guarantees the right of the churches to communicate concerns to the public and to the government.

a. The Church's Responsible Cooperation with the Government

1) The church relates to the interests of the state by offering intercessory prayers on its behalf. Christians are called to offer supplications and thanksgiving for all persons, especially "for kings and all who are in high positions" (1 Timothy 2:1).

2) The church relates to the interests of the state by encouraging responsible citizenship and government service. The church has always admonished its members to be "subject to the governing authorities" (Romans 13:1) out of respect for the civil power ordained by God.

3) The church relates to the interests of the state by holding it accountable to the sovereign law of God, in order to provide judgment and guidance for those leaders responsible under God for the peace, justice, and freedom of the world.

4) The church relates to the interests of the state by contributing to the civil consensus which supports it. Especially under the U.S. system, which provides for wide participation, the church has the responsibility to help create a moral base and legal climate in which just solutions to vexing political problems can take place.

5) The church relates to the interests of the state by championing the human and civil rights of all its citizens. Christians believe that under God the state exists for people, not people for the state. In addition, the church may volunteer its resources as a channel for meeting the needs of society through cooperation with government.

b. The Government's Responsible Cooperation with the Church

1) The state relates to the interests of the church by ensuring religious liberty for all.

2) The state relates to the interests of the church by acknowledging that human rights are not the creation of the state.

3) The state relates to the interests of the church by maintaining an attitude of "wholesome neutrality" toward church bodies in the context of the religious pluralism of our culture.

4) The state relates to the interests of the church by providing incidental benefits on a nonpreferential basis in recognition of the church's civil services which are also of secular benefit to the community.

5) The state relates to the interests of the church by providing funding on a nonpreferential basis to church agencies engaged in the performance of educational or social services which are also of secular benefit to the community.

C. PUBLIC POLICY RECOMMENDATIONS

The foregoing "Statement of Affirmation," prepared by the Lutheran Council's Consultation on the Nature of the Church and Its Relationship with Government, speaks in broad terms about a Lutheran understanding of the appropriate relationship between church and government, under God, which has been described in terms of "institutional separation and functional interaction."

The consultation applied this understanding to a number of concrete issues presently confronting Lutheran churches, their agencies and institutions in their relationship with government. The following recommendations, which deal with current issues, illustrate ways our churches can address future issues and should be understood as relating to the "Statement of Affirmation."

1. Religious Liberty

We affirm in principle the civil right of the free exercise of religion by a wide variety of groups in our pluralistic culture. We acknowledge that the constitutional guarantees protecting religious beliefs are absolute. However, we recognize that those guarantees governing religious practices are not absolute. The violation of human rights and the breaking of just laws in the name of religion are deplored by our churches.

Recommended:

That the Lutheran Council encourage the participating churches to oppose any attempt by government to curb religious liberty through criminal and/or administrative measures focused at groups, except in cases posing a grave and immediate threat to the public's health, safety, or welfare.

2. Regulatory Processes

Lutheran churches, together with other churches and voluntary organizations, perceive a trend toward greater governmental intervention and regulation leading to erosion of civil and religious liberties.

Recommended:

That the Lutheran Council urge Congress to review the regulatory processes, to ensure that they afford adequate notice and opportunity to the public to study and respond to proposed regulations and rulings.

3. Integrated Auxiliaries

Prior to 1969 most religious organizations, including churches and their related agencies, were exempted from filing informational returns with the Internal Revenue Service. The Tax Reform Act of 1969, however, stipulated that all organizations exempt from taxation under Section 501 (a) of the Tax Code would henceforth have to file an annual informational Form 990 return—except churches, their "integrated auxiliaries," conventions and associations of churches, the exclusively religious activities of any religious order, and exempt organizations with gross receipts under $5,000 annually. The law involves the reporting of information; no payment of taxes is involved.

The problem for the IRS since 1969 has been to define "integrated auxiliaries," since that term had no legal meaning and no common definition among religious groups. In February 1976 the IRS issued proposed regulations which had the net effect of providing for all churches a single and extremely narrow definition of religious mission. Protests by a number of religious organizations led to some modifications in the "final" regulations issued in January 1977, but the regulations continue to be restrictive. Explicitly excluded from the definition of "integrated auxiliaries" are church-related hospitals, orphanages, homes for the elderly, colleges, universities, and elementary schools, although elementary and secondary schools are exempt from filing.

The heart of the issue is that the regulation relative to "integrated auxiliaries" seeks to impose on the churches a definition of "religious" and "church" which the churches cannot accept theologically, one which constitutes an unwarranted intrusion by the government into the affairs of the churches. The narrow definition introduces confusion within the churches and their agencies and institutions. Questions are raised in the agencies and their constituencies about whether these ministries are considered to be part of the churches' mission. It also leads the government to attempt other intrusions into the activities of the churches and church-related agencies and institutions, e.g., the Department of Labor's stance in the unemployment insurance tax issue (see section 5, below).

Our churches would probably not object to the disclosure of most of the information required by Form 990 by those agencies and institutions of the church whose ministries appear to have counterparts in the public sphere, if such requirement of disclosure were not predicated upon a denial that those ministries are an integral part of the churches' mission. But the churches object on principle to having any of their ministries, including their agencies and institutions, be treated as "not religious." These agencies and institutions perform ministries which are essential to the churches' mission and must not be put in a different category from the strictly sacerdotal functions of the churches.

Recommended:

- That the Lutheran Council encourage the participating churches to seek statutory change which will recognize the religious character of the churches' ministries through their agencies and institutions;
- That the Lutheran Council encourage the participating churches to urge selected agencies and institutions to initiate a court test of the present IRS definition of "integrated auxiliaries." The intention of such action would be (a) to assure the churches' agencies and institutions that the church bodies continue to consider them an integral part of their mission; (b) to assist Congress in achieving a better understanding of this issue; and (c) to achieve a court ruling restoring the recognition of the integrity of the churches' ministry through their agencies and institutions.

4. IRS and Private School Desegregation

A religious organization, as other organizations otherwise entitled to a tax-exempt status, cannot claim the exempt status and at the same time operate contrary to established public policy on racial nondiscrimination. Withholding or withdrawing of the tax exemption by government must be based on an organization's racially discriminatory policy or practice determined on facts within a framework of due process. Presumptions on general circumstances or external conditions are inadequate for this purpose.

On August 22, 1978, the Internal Revenue Service issued a "Proposed Revenue Procedure on Private Tax-Exempt Schools." The proposal set forth guidelines which would be used by the IRS to determine whether such schools are operated on a racially discriminatory basis and whether they are entitled to tax exemption under Section 501 (c) (3) of the Internal Revenue Code. On December 5, 1978, the IRS held hearings on the proposed revenue procedure. At that time, Lutheran church bodies presented testimony opposing the proposed procedure. On February 9, 1979, the IRS revised its original proposal. The revised revenue procedure is a reasonable procedure for dealing with racial discrimination by private schools. It may have been unnecessary, but it is not objectionable.

Recommended:

That the Lutheran Council urge the participating churches to support the withholding or withdrawing of the tax-exempt status of organizations which, in fact, have a policy or practice of racial discrimination.

5. Unemployment Insurance Tax

To understand the current issues involving the churches' exemption from unemployment insurance coverage, the following points must be remembered:

First, the statutory exemption from coverage under the unemployment insurance law is based on structure, i.e., "church," "convention or association of churches" and "organization operated primarily for religious purposes." The Department of Labor is trying to qualify this by reading into it a functional test, narrowly tied to worship.

Second, elimination of the exemption would seem to have only a negligible impact on free exercise of religion. The direct effect would be paying a tax. There would be an indirect effect of possibly paying a higher tax (depending on experience rating) based upon discharging employees for what the organization might regard to be misconduct on religious grounds but which the government would decide was not such misconduct.

Both religion clauses of the First Amendment are violated when the government establishes an exemption based on structure and then applies it on the basis of the government's perception of whether an activity is or is not religious or sufficiently religious.

Recommended:

That the Lutheran Council, while not necessarily opposing legislation which would eliminate the churches' exemption from unemployment insurance coverage, encourage the participating churches to oppose efforts by regulatory agencies of government to include the churches in unemployment insurance programs by definitions that appear to be contradictory to existing legislation.

6. Public Funding and Regulation of Church-Related Education and Social Services

Education and social services are the tasks of society as a whole. These are public services. When churches contribute to the fulfillment of these public services, they may accept a measure of public support and a concomitant degree of monitoring by government on behalf of the public. That is, government may provide assistance on a nonpreferential basis in recognition of the public services and benefits provided by church-related educational institutions and by social service agencies and institutions of the churches. In relation to these public services, government regulation of church-related institutions and agencies is not per se objectionable.

Recommended:

- That the Lutheran Council urge the participating churches to object when governmental regulation of church-related educational institutions and social service agencies or institutions violates due process, exceeds statutory authority or infringes on First Amendment guarantees;
- That the Lutheran Council encourage the participating churches to join, when possible, with other members of the voluntary sector in objecting to unreasonable regulations. Only when there is a bona fide constitutional question at stake should the Free Exercise Clause be invoked as the basis for objection to regulation;
- That in order to maximize the access of citizens in our pluralistic society to education and social services from agencies and institutions of their choice the Lutheran Council encourage the further exploration and assessment of all constitutional means of government support for a variety of social and educational services at all levels, whether public, private, or church-related.

7. Specialized Ministries of Clergy

Church and government are presently interacting in two sets of circumstances involving the specialized ministries of the churches' clergy. One has to do with specialization in pastoral counseling and the other with chaplaincies in specialized settings. Both of these ministries are more often conducted apart from and on behalf of congregations than through specific local congregations.

The point of intersection between church and state with respect to specialization in pastoral counseling is where governmental units seek to license or otherwise regulate such ministries. The normal counseling dimension in the work of parish pastors is not a part of the issue.

The points of interaction between church and state with respect to chaplaincies in specialized settings have to do with the right of churches to have adequate access in order to serve persons in such settings, the right of individuals in those settings to have access to the ministries of the churches, and the best way to combine these two rights of access.

Attention is drawn to the statement defining pastoral counseling and suggesting standards for certification and accountability approved by the Lutheran Council's Division of Theological Studies and Department of Specialized Pastoral Care and Clinical Education and by the council itself. Additionally, two studies are currently underway in the DTS in consultation with the DSPCCE: one on state licensure of pastoral counselors and the second on institutional chaplaincies.

Recommended:

- That the Lutheran Council encourage the participating churches to establish standards of approval and accountability for professional pastoral counselors and urge the states to recognize the status of such pastoral counselors;
- That the Lutheran Council urge the participating churches to maintain their right of access to restricted environments (e.g., prisons, hospitals, and the military) in order to serve people in those environments, assert the right of people in such environments to access to the ministry of the church, and assert that these two rights of access are best served when qualified persons are integrated into the total function of that environment.

8. Regulation of Lobbying Activity

Advocacy on behalf of justice is an integral part of our churches' mission. The "substantiality" test as applied to lobbying activity requires that "no substantial part" of the income or activities of any tax-exempt organization may be directed toward "carrying on propaganda, or otherwise attempting to influence legislation" (Section 501 (c) (3) of the Internal Revenue Code). Such a test unfairly penalizes, through the threat of loss of tax exemption, those churches which regard public advocacy as part of their mission. Moreover, the effect of this test is to give preferred status, in violation of the Establishment Clause of the First Amendment, to those churches which do not participate actively in the debate on public policy.

Recommended:

That the Lutheran Council urge the participating churches to resist in principle the "substantiality test" as applied to lobbying activity by the churches.

Regulation of lobbying activity may jeopardize the constitutional rights of freedom of speech and freedom to petition the government for redress of grievances which, in turn, is contrary to the interest of open government and the public's right to be informed on issues. It is the responsibility of those who sponsor legislation that may seriously jeopardize those rights guaranteed under the First Amendment to certify that there is a compelling need for government intervention and regulation.

Lobby disclosure legislation which has been proposed extends its scope beyond those organizations engaged in major and continuing lobbying activity. It would, in fact, lay heavy burdens upon small, nonprofit organizations and thus limit many of the services they render in search of peace, justice, and human rights.

Recommended:

That the Lutheran Council publicize the arguments it has set forth as testimony on March 14, 1979, before the House Subcommittee on Administrative Law and Governmental Relations, Committee on the Judiciary, stating opposition in principle to many of the components of far-reaching lobby disclosure legislation.

Lobby disclosure legislation which includes provisions requiring the reporting of grass-roots lobbying and the disclosure of the names of contributors will substantially restrict the free exercise of religion. Such legislation may well result in intimidation of the churches in carrying out their mission because of the massive record keeping that it would require. Disclosure of names poses a potential threat to those who might be inclined to address specific issues through contributions to the churches. Such legislation could also lead to excessive entanglement of government in the work of the churches.

Recommended:

That the Lutheran Council urge the participating churches to oppose any lobby disclosure legislation which would substantially restrict the free exercise of religion.

The method for enforcing any lobby disclosure requirements is an important issue. Criminal sanctions are inappropriate in that they lead to intimidation of those who would be inclined to address government and thus will have a chilling effect on free speech and the right to petition the government.

Recommended:

That the Lutheran Council recommend that the participating churches continue to oppose criminal sanctions within the context of any present or future lobby disclosure legislation.

9. Fund-Raising Disclosure

Lutherans support in principle the concept of fund-raising disclosure. The members of this consultation gladly endorse voluntary reporting of financial operations by church-related and other charitable organizations and encourage the maintenance of an informed giving public. However, in saying this, we are not endorsing every legislative or administrative effort that may be proposed to implement disclosure.

While aware of legitimate interest in curbing past abuses, we oppose federal legislation and regulation which would encompass the entire charitable community in an effort to reach and expose the activities of a very small number of fraudulent operators who solicit money from the general public.

There is no compelling need for legislation requiring charitable solicitation disclosure, given existing laws. Broad and inclusive legislation in this area would likely lead to an expansion of bureaucracy and could create serious constitutional difficulties.

Recommended:

That the Lutheran Council urge the participating churches to oppose any legislation relating to fund-raising disclosure which leads to an unwarranted expansion of government bureaucracy without a justifying and compelling need, an unwarranted and excessive entanglement by government in the affairs of the church, or an unconstitutional involvement by the government in defining the church, its mission, ministry, or membership.

10. Tax Exemptions and Deductions

Religious organizations receive a number of tax exemptions and deductions under state and federal law. However, not every benefit of exemptions and deductions presently enjoyed is indispensable to the free exercise of religion. Lutherans in the USA must never be willing to subordinate their right to such free exercise of religion in exchange for, or as a condition of, the continuation of all benefits of exemptions and deductions currently in effect.

Recommended:

- That the Lutheran Council lend its support to coordinated efforts to ensure the continuance of all proper tax exemptions and deductions for all organizations in the voluntary sector, including religious organizations, as long as acceptance of these exemptions and deductions does not jeopardize constitutionally protected religious rights and freedoms;
- That the Lutheran Council urge repudiation of the concept that exemptions and deductions for organizations in the voluntary sector are tax expenditures.

11. Enhancing the Importance of Charitable Contributions

Studies have shown that changes in tax forms to simplify filing have had an adverse effect upon charitable giving. To reverse this trend, legislation has been introduced to make the charitable deduction available to all taxpayers, whether they elect the standard deduction or itemize their deductions.

Allowing a separate charitable deduction for all taxpayers whether or not they itemize their other deductions would (a) represent an important incentive to personal giving to voluntary human services, (b) recognize the unique nature of the charitable deduction in contrast with other currently itemized deductions, (c) democratize the charitable deduction's base by extending its use to most middle and low-middle income taxpayers, (d) reverse the current trend toward decreased use of this deduction, and (e) avoid the regulatory and related governmental requirements associated with direct forms of federal assistance.

Under another proposal such a charitable deduction for all taxpayers would be allowed only if the charitable contributions exceed a certain amount or percentage of income (the "floor"). Establishing a "floor" would negate the positive effects of a proposal which permits all taxpayers to deduct gifts to charity on their individual income tax returns.

Recommended:

- That the Lutheran Council continue to support legislation that would allow all taxpayers to take a deduction for their charitable gifts, whether or not they itemize their other deductions;
- That the Lutheran Council inform its participating church bodies and the Congress of the justification and need for such a deduction;
- That the Lutheran Council continue to oppose any new limitations, such as a "floor," on the use of the charitable deduction.

D. IMPLEMENTATION OF CONSULTATION GOALS

For implementation of the goals of the consultation on church-state issues, the following actions were taken by the annual meeting of the Lutheran Council in May 1979:

- Adopted the above report of the consultation as a policy statement for the guidance of the work of the council;
- Authorized the general secretary of the Lutheran Council to have the report and the recommendations as adopted printed and distributed to the church bodies participating in the consultation;
- Authorized the general secretary of the Lutheran Council or his representative to present testimony thereon before committees of the Congress, legislative bodies, and agencies of government as opportunity arises, the precise testimony in each instance being subject to approval by the presidents of the participating church bodies or their appointees;
- Requested the presidents of the four participating church bodies to nominate persons for election by the council to constitute a continuing consultative committee of seven, responsible for studying church-state issues, this committee to meet at least twice a year with the staff of the council's Office for Governmental Affairs;
- Authorized the appointment by the general secretary of the Lutheran Council, in consultation with the executive director of the Office for Governmental Affairs, of a committee of legal consultants, including lawyers drawn from the four participating church bodies, to meet on call of the general secretary for deliberation of legal aspects of church-state issues;
- Authorized the Office for Governmental Affairs in cooperation with the Division of Theological Studies and the Division of Mission and Ministry to hold a follow-up consultation with representatives of other church bodies and others interested in matters considered by the consultation;
- Referred the report and recommendations of the consultation as adopted by the council to the participating bodies for their endorsement in substance.

Statement of Charles V. Bergstrom
Lutheran Council in the USA
To the House Committee on Government Operations
Subcommittee on Legislation and National Security
on the Issue of Proposed Amendments to the
Office of Management and Budget Circular A-122

March 4, 1983

My name is Charles V. Bergstrom. I serve as Executive Director of the Office for Governmental Affairs, the Lutheran Council in the U.S.A. On behalf of the Council, I express appreciation to the Chairman and to members of the Subcommittee for conducting the hearing on March 1, 1983, and for providing the opportunity for the Lutheran Council and its constituent bodies represented by our office. I am speaking on behalf of three church bodies of the Lutheran Council:

> The American Lutheran Church, headquartered in Minneapolis, Minnesota, composed of 4,900 congregations having approximately 2.4 million U.S. members;
>
> The Lutheran Church in America, headquartered in New York, New York, composed of 5,800 congregations having approximately 2.9 million members in the U.S.; and
>
> The Association of Evangelical Lutheran Churches, headquartered in St. Louis, Missouri, composed of 270 congregations having approximately 110,000 U.S. members.

We share in the opposition expressed by members of your committee, other members of Congress, and the long list of witnesses who appeared on March 1. My statement will be very brief, since the Lutheran Council in the USA is a member of the Independent Sector. The president of the Independent Sector, Mr. Brian O'Connell, appeared as a witness at the March 1 hearing of your Subcommittee; in his written report he specifically has labeled the OMB Circular A-122 amendments as "unnecessary, unworkable, and unconstitutional." We concur.

In 1979, the Lutheran Council convened a consultation on church and government, and in May of that year adopted a statement concerning the churches' ministry of advocacy. A copy of that statement is attached. It presents a very clear theological basis for church-government interaction and for advocacy. I ask that you note particularly the emphasis on the need for such interaction for the common good of all, for the alleviation of poverty, and the continued strengthening of social justice. I quote the following from that 1979 statement as directly related to our oppositions to OMB Circular A-122:

> "That the Lutheran Council urge the participating churches to object when governmental regulation of church-related educational institutions and social service agencies violates due process, exceeds statutory authority or infringes on First Amendment guarantees;
>
> "That the Lutheran Council encourage the participating churches to join, when possible, with other members of the voluntary sector in objecting to unreasonable regulations;
>
> "That in order to maximize the access of citizens in our pluralistic society to education and social services from agencies and institutions of their choice the Lutheran Council encourage the further exploration and assessment of all constitutional means of government support for a variety of social and educational services at all levels, whether public, private, or church-related."

We oppose the OMB amendments to Circular A-122 and we will oppose any revised editions. There is no need for it and it is a mockery in the face of the administration's call upon the voluntary sector for help in serving people. Surely it is clear that no great misuse of government funds has occurred. The nonprofit voluntary sector's record is one of dedication.

We believe that the religious community is in a unique position to provide assistance--both privately and governmentally funded--to those in the society who are in the greatest need, both at home and abroad. We are committed, because of our religious and moral beliefs, to serve all of God's people and to be the servant of no special interest groups. We advocate justice on behalf of those who are powerless and in need--not ourselves.

The implementation of the proposed amendments would hamper our agencies severely in our ministries, and we urge that the proposed amendments be withdrawn.

Rev. Charles V. Bergstrom

Statement of Charles V. Bergstrom
Lutheran Council in the USA
To the House Committee on the Judiciary's
Subcommittee on Constitutional and Civil Rights
on the issue of Proposed Amendments to the
Office of Management and Budget Circular A-122

March 9, 1983

My name is Charles V. Bergstrom. I serve as Executive Director of the Office for Governmental Affairs, the Lutheran Council in the U.S.A. On behalf of the Council, I express appreciation to the Chairman and to members of the Subcommittee for conducting this hearing, and for providing the opportunity for the Lutheran Council and its constituent bodies represented by our office. I am speaking on behalf of three church bodies of the Lutheran Council:

> The American Lutheran Church, headquartered in Minneapolis, Minnesota, composed of 4,900 congregations having approximately 2.4 million U.S. members;
>
> The Lutheran Church in America, headquartered in New York, New York, composed of 5,800 congregations having approximately 2.9 million members in the U.S.; and
>
> The Association of Evangelical Lutheran Churches, headquartered in St. Louis, Missouri, composed of 270 congregations having approximately 110,000 U.S. members.

My statement will be very brief, since the Lutheran Council in the USA is a member of the Independent Sector. The president of the Independent Sector, Mr. Brian O'Connell, in his written report specifically has labeled the OMB Circular A-122 amendments as "unnecessary, unworkable, and unconstitutional." We concur.

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We believe that the religious community is in a unique position to provide assistance--both privately and governmentally funded--to those in the society who are in the greatest need, both at home and abroad. We are committed, because of our religious and moral beliefs, to serve all of God's people and to be the servant of no special interest groups. We advocate justice on behalf of those who are powerless and in need--not ourselves.

The implementation of the proposed amendments would hamper our agencies severely in our ministries, and we urge that the proposed amendments be withdrawn.

Statement of Charles V. Bergstrom
Lutheran Council in the USA

before the

Subcommittee on Separation of Powers
Committee on the Judiciary
U.S. Senate

on

S 1405

May 23, 1984

My name is Charles V. Bergstrom. I serve as Executive Director of the Office for Governmental Affairs, the Lutheran Council in the U.S.A. On behalf of the Council, I express appreciation to the Senate Subcommittee on Separation of Powers of the Judiciary Committee for the opportunity to testify in opposition to S. 1405, the "Federal Neutrality Act of 1983." I request my printed testimony and spoken comments be made a part of the permanent record of these hearings. I am speaking on behalf of three church bodies which participate in the Lutheran Council:

> The American Lutheran Church, headquartered in Minneapolis, Minnesota, composed of 4,900 congregations having approximately 2.4 million United States members;
>
> The Lutheran Church in America, headquartered in New York, New York, composed of 5,800 congregations having approximately 2.9 million members in the United States; and
>
> The Association of Evangelical Lutheran Churches, headquartered in St. Louis, Missouri, composed of 270 congregations having approximately 110,000 United States members.

There has been a recent history of increased government regulation and proposed legislation that affects the ministry of religious organizations and the work of much of the voluntary sector of our nation. Some of this seems to indicate a governmental distrust of the voluntary sector. While this mistrust is not peculiar to this administration, it is harder to understand in the current context, given the President's theoretical reliance on the private and voluntary sector to provide needed services. In a time when the government is asking more from church and other service organizations there should not be any actual or implied harassment of these groups. Many of these organizations are working diligently to help the increased number of poor, the hungry, and those needing special assistance. We feel that S 1405 would result in unwarranted government intervention into the activities of churches and other voluntary groups.

Individual and collective voices have expressed concern about government actions affecting advocacy efforts of non-profit groups. This was one of the church/state issues studied in 1979, when the Lutheran Council in the USA convened a conference to deal with recent instances of governmental encroachment on the rights of the churches. A very broad and inclusive interfaith conference in February 1981, entitled "Government Intervention in Religious Affairs," also addressed this issue, and a follow-up gathering is planned for September of this year. S 1405 can only increase that well justified reaction.

An increasingly complex society has produced growing interdependence and interaction among groups, persons, and resources in the governmental, economic, and voluntary sectors. The government's responsibilities to maintain equity and order and to provide services essential to the common good have led churches, the voluntary sector, and the state into greater contact and, at times, into tension, as they pursue their often complementary activities. As governmental bodies seek to perform their roles and charitable groups seek to fulfill their missions, each needs to be aware of the other's purposes, principles, and methods. In their endeavors, all have the task of formulating and clarifying their positions.

This hearing is representative of such essential communication efforts--efforts which would be undermined by the pending legislation. The Lutheran churches I represent recognize that government has a right to ensure that funds granted to voluntary organizations are used for the purposes intended. That is a legitimate governmental concern. But the church has an understandable concern that the government not define the ministry of the church, restrict its legitimate, society-serving activities or hinder its communication with government. S 1405 clearly would do exactly that, while not adding significantly to the government's interest.

I wish to say early in this testimony that the Lutheran churches I represent are not at all convinced that there is any widespread misuse of government funds by those charitable organizations receiving federal funds. The House Subcommittee on Legislation and National Security of the Government Operations Committee conducted hearings on OMB Circular A-122 in March of 1983. That circular also sought to restrict advocacy ministries of charitable organizations. Testimony of many voluntary groups refuted the need for more stringent regulations to restrict those fine organizations. The testimony of the Solicitor General backed their claims, noting that there is no evidence for suspicion about federal funds being used wrongly--hence no compelling government interest to justify the burdensome approach outlined in S 1405.

If any organizations are violating current law, they should be prosecuted. It is neither fair nor sensible to pass new legislation for everyone when current accounting requirements and practices could be clarified to meet the government's concerns--if that is shown to be necessary. Much of the language of S 1405 creates a chilling effect for these groups seeking to serve special needs.

Among the many provisions which we consider overly broad and ill-defined are the following:

Prohibitions Section 3. (a) (I) "No Government funds may be disbursed to any recipient organization which engages in political advocacy or which is an affiliate of any organization which engages in political advocacy;"
Definitions Section 3. (b) (3) (C) ["Political Advocacy" as used herein includes-] "attempting to affect the opinions of the general public, or any segment thereof, with respect to governmental decisions;"
Enforcement Section 6 (1) "Any intentional misrepresentation with respect to the certification or disclosure requirements shall constitute a felony, punishable by a fine up to $10,000 per offense, and/or a prison term not to exceed two years per offense."

The term affiliate is terribly inclusive, Lutheran churches, for instance, have a range of affiliated organizations, which are separate in structure and governance, but which carry out the mission of the church. Some would fall under the definition found in S 1405. A nursing home for the elderly, a social service agency providing assistance for refugees, educational programs to assist developmentally disabled children and their parents--all might be affiliated with the Lutheran churches I represent, and all might receive federal funds earmarked to carry out those society-enhancing purposes. We engage in these supporting activities because social service is part of the church's mission--and in these instances, through grants of federal monies, we interact with and assist the government in carrying out activities it establishes to enhance the common good. These affiliates are extremely careful that the funds channeled through them are used for the purposes intended--and not for other church-related purposes.

But advocacy is also part of the church's mission. (I will say more about this later in this testimony.) The bill before us would mean that parent churches affiliated with social service agencies would not be able to engage in advocacy with their own resources without putting their affiliates in jeopardy of losing federal funds--or worse! This bill would restrict the church's ministry on behalf of persons in need. It would even restrict any contacts made to preserve the integrity of the church over/against governmental encroachment. For example, if Congress were considering a bill revoking the basic tax exemption of churches, the churches could not protest that action to their representatives without endangering the status of their refugee resettlement activities-even though the two issues have nothing to do with each other! In effect, the bill would attempt to prescribe what the church should or should not be doing--a job that government is neither competent nor constitutionally authorized to do.

Other broadly-defined terms cause us difficulty. "An act of political advocacy" might mean something quite different to the government than it does to the church or other groups. Churches would be unable to state their interest in governmental policies designed to alleviate international hunger to their own members using their own money without placing their centers for the retarded in jeopardy of losing their federal grants.

In addition, the "criminal penalties" in S 1405 are a harsh and unnecessary response to a problem which has not been proven to be widespread; they would have a chilling affect on the legitimate activities of charitable agencies and churches and on the useful interaction between the voluntary and public sector. For the government's own good, the non-profit sector should rather be encouraged to communicate with the government. I quote Rep. Frank Horton (R-NY), ranking minority member of the House Government Operations Committee, who asserted the need for such communication: "These people provide ideas; they help us evaluate thoughts of our own; they aid in drafting documents so that those statements are technically correct and have as few unforeseen consequences as possible; and they give us an impression of how different groups in society will view our work." Such information would be discouraged by this bill. The flow of information would be throttled; the fear of criminal penalties or of losing federal funds would divide those who need to work together for the common good. To cite just one example, there would be less non-profit involvement in legislative sessions--and committee hearings such as this. Much service for the poor, refugees, and minorities would be curtailed, and for no reason!

The bill is entitled "The Neutrality Act of 1984". That raises the question, neutral in what way? The bill seems to indicate fundamental lack of neutrality. We would assert that those voluntary groups willing to serve and using federal funding

The implications for church-affiliated groups are even more complex. I would like to share with you the basis for our understanding of our working relationship with government. The 1979 Lutheran Council consultation stated: The distinctive mission of the church includes the proclamation of God's Word in worship, in public preaching, in teaching, in administration of the sacraments, in evangelism, in educational ministries, in social service ministries, and in being advocates of justice for participants in the social order. Note the ministry of advocacy! Lutheran churches have the authority and prerogative to enter into relationships, associations, and organizations with one another; with overseas Lutheran churches and bodies; with other Christian fellowships or other religious groups on regional, national, and international levels; and with voluntary or governmental agencies where such interaction is helpful and fitting to their respective purposes. In this "functional interaction," the government may conclude that efforts and programs of the churches provide services of broad social benefit. In such instances and within the limits of the law, the government may offer and the churches may accept various forms of assistance to furnish the services. But functional interaction also includes the role of the churches in informing governmental authorities about church interests, and advocating for and speaking publicly on issues related to social justice and human rights. From the Lutheran perspective, the church has the task of addressing God's Word to its own activities and to government. The United States Consitution guarantees the right of the churches to communicate concerns to the public and to the government. S 1405 would go far beyond a healthy interaction between church and state; it would restrict the free exercise of our religion.

I strongly urge the committee to consider the serious problems involved in such legislation as S 1405. Present laws fully govern the use of federal funds by 501 (c)(3) organizations. These religious and secular non-profit organizations serve this nation well! Brian O'Connell, President of Independent Sector, which represents approximately 500 voluntary groups, has said: "One of the unique aspects of American Society is its ability to blend public and non-profit resources to develop sound public policies and services. This often means that the less costly, more effective, and responsive services are provided. As we work together to meet America's needs and aspirations, it will be essential to protect and preserve the appropriate independence of voluntary associations. Part of that independence is expressed in needed and legitimate advocacy, an essential aspect of the service of many public serving non-profit institutions."

Certainly, legislation should encourage and support voluntary groups. By no stretch of logic does S 1405 do that. Shelve it permanently!

COALITION ON INTERNAL REVENUE DEFINITIONS
OF RELIGIOUS BODIES

May 25, 1984

Mr. John Chapoton
Assistant Secretary for Tax Policy
Department of the Treasury
3112 Main Treasury
15th and Pennsylvania Ave. N.W.
Washington, D.C. 20220

Dear Mr. Chapoton:

On December 19, 1983, we sent you a letter in response to your letter to us concerning the Treasury interpretation supporting the integrated auxiliary regulations under IRC §6033 as finalized.

Previously, we had submitted to you a proposal to amend the regulations in a way that can be supported by many members of the religious community. Our most recent letter to you described some areas in which we feel the Treasury interpretation is based upon incorrect information.

As you are aware, we have been working with the President's Task Force on Regulatory Relief with respect to the integrated auxiliary regulations.

We would respectfully request the opportuntity to meet with you in your office in Washington, D.C. for the purpose of discussing the areas we pointed out in our letter and our proposal to amend the integrated auxiliary regulations.

Please let me know by calling me at (212) 870-2483 or at (516) 293-2519 the date or dates that we might meet with you.

Very truly yours,

[original signed by Dean Kelley]
Dean M. Kelley

cc: All Coalition Members
    Mr. C. Boyden Gray

Senator HATCH. Thank you, Reverend Bergstrom. I really have enjoyed your testimony, and appreciate the courage that you have exemplified in coming here and giving your particular point of view.

Do you feel the Internal Revenue Service, in preparing its recommendations, makes a good-faith effort to safeguard the free exercise rights of churches?

Reverend BERGSTROM. I think sometimes they do not really think about that. In the 1979 case of private schools and desegration they learned belatedly about how religious schools differ from one another when they were issued a regulation that meant that a Yiddish school in Miami, FL, had to have the same number of blacks as the public schools had. It just could have been helped a great deal if they had conversations with religious people, not that we have to have our way, but we could have been very helpful in that kind of a decision. I think very often it is a matter of going ahead and issuing a regulation without the kind of consultation they could have that would be helpful to them.

Senator HATCH. Do you feel that the tax exemption of a church—that any particular church receives, or all churches receive, constitute a form of Federal assistance and, if so, is this in your opinion, a violation of the establishment clause of the first amendment?

Reverend BERGSTROM. No; I do not think it does. I may be reassured to hear that the two attorneys have answered that already. But I think it is a decision that the exemption is to be given.

I have said many times, Senator, that churches who receive that, that should be part of their community. I say about congregations and municipal government. I think our national churches should therefore be willing to serve and participate in things so that it is not a gift, it is not something that they receive because they are better, simply as a recognition by the Government that religion is to be faced on the basis of those two amendments.

Senator HATCH. Your religion has certainly been around a long time, going back to the early days of the Reformation. Martin Luther, of course, himself, underwent a great deal of persecution, as a leader in one of the so-called mainstream religions. Do you sense any persecution or discrimination against your church, or any of its members, in any significant way and, if so, describe that for us?

Reverend BERGSTROM. No; I do not. I think that the case I referred to are cases involving actions by specific departments of the Government. I have indicated problems with the IRS and OMB, in which their actions have hindered the ministry of the church. But I do not feel that it was aimed in the direction of persecution.

But I do think there has been an exaggeration by Government of the voluntary sector taking advantage of Government money and freedom. Very, very little evidence has shown that their charges are true, and I think there has been an overzealous movement on the part of some Government officials to restrict churches, particularaly those who may use Government money for their activities.

Senator HATCH. Do you sense any significant discrimination against, or persecution of any other churches involved with the Government, and if so, explain the nature of the persecution, and the churches involved, if you can?

Reverend BERGSTROM. I do not know of the details. You have listened to some people already this morning. There are certainly some questions raised.

We signed on as friends of the court in the *Worldwide Church of God* case, that was referred to in California not because we supported their theology, but to say that we did not feel that the State had the right to seize the assets of a church. Some church groups sign on briefs, in other cases, because they interpret the facts differently than the Government. You have to balance the right of the church to define its ministry, then the Government. You have to balance the right of the church to define its ministry, rights of students in private or public school, and the rights of a minority people in many of these cases. So I do not know the details of those cases. There certainly may well be miscarriages of justice, and serious cases of governmental encroachment. Each case must be fully reviewed.

Senator HATCH. Do you have any problems with, except in very clear-cut cases, ministers going to jail, such as we have been hearing about, not only here, but reading in the newspapers, and so forth?

Reverend BERGSTROM. Ministers are like everybody else. If they break laws, and some of them end up in jails because they break laws, each case is separate. We are no different from anyone else. We should be treated the same as everybody else under the law. But if there is persecution of a particular branch of the church or individual, then obviously it would be wrong. Religious people do just as many bad things as the nonreligious.

Senator HATCH. I am afraid that may be somewhat true.

Reverend BERGSTROM. It is the forgiveness that helps us.

Senator HATCH. Well, thank you very much, Reverend Bergstrom. Your comments have been very helpful, and we appreciate it.

Reverend BERGSTROM. Thank you.

Senator HATCH. Our court reporter has really been working hard now for 2 solid hours—excuse me, about an hour and a half.

Would you like to take a short break?

I wonder if we could just take a break for about 5 minutes, and we will ask our next witness then to come to the table, Rev. Sun Myung Moon. We will just take a 5-minute break.

[Short recess.]

Senator HATCH. We will now ask our next witness to come to the table, Rev. Sun Myung Moon, who is the founder of the worldwide movement—if we could have order, formerly known as the Holy Spirit Association for the Unification of Christianity and, popularly called the Unification Church.

Reverend Moon is a Korean who came to America in the early 1970's to spread the word of his church in this country. He has a large following of church members throughout the world, and I just want to say that we are pleased and honored that he has accepted our invitation to appear before the subcommittee at this important oversight hearing.

I might mention that Reverend Moon very seldom makes public appearances. He has in recent months been involved in a lawsuit brought against him by the U.S. Government, which involves some intriguing issues, going to the very heart of religious freedom.

I might add, that as chairman of the Subcommittee on the Constitution, I personally analyzed his case very carefully, and felt so strongly about what I believe were violations of Reverend Moon's constitutional rights, in the manner in which his trial was conducted, that I filed my own amicus curiae brief with our Supreme Court, urging the Court to accept his case on appeal.

Unfortunately, the Supreme Court did not accept his case, and I believe made a mistake in not doing so. Whether or not you agree with Reverend Moon's views, that is not the issue. Whether or not you like Reverend Moon is not the issue.

What we are concerned about here should be a concern of every American citizen, and that is whether or not his, and in a sense, every American citizen's constitutional rights were violated.

We are most interested in hearing Reverend Moon's views on the overall perception he has of religious freedom in this country, and to the extent he feels it necessary to refer to his own recent case in that regard, if he wants to do so, he is free, of course, to do so.

Reverend Moon will be speaking to us through a translator, Col. Bo Hi Pak, and so, Reverend Moon, we are happy to invite you to come to the witness chair with Colonel Pak, and we will be very pleased to take your testimony at this time.

Colonel Pak, if you will pull his microphone up a little closer to him, I would appreciate it, so that all can hear.

STATEMENT OF REV. SUN MYUNG MOON, UNIFICATION CHURCH, AS GIVEN THROUGH THE TRANSLATOR, COL. BO HI PAK

Colonel **Pak**. Mr. Chairman, in order to economize the time, Reverend Moon will deliver his opening prepared remarks in English. He seldom does this, but he would like to do so on this occasion. Then afterward, the questions and answers will be translated.

Senator **Hatch**. Well, thank you very much.

Reverend **Moon**. Honorable Chairman, distinguished Members of the Senate, ladies and gentlemen, I would like to express my heartfelt appreciation for inviting me to speak at this Senate hearing on religious freedom. I want to also express my sincere gratitude, Mr. Chairman, for your support in favor of my appeal to the Supreme Court. Your noble deed to uphold the principle of constitutional rights of individuals will be long admired by millions of Americans.

Since the Supreme Court refused to review my case, there has been a very strong protest by many members of the religious community. More than a thousand clergymen, Jewish—Christian, and Islamic—have pledged to commit 1 week of their lives in prison with me in the name of religious freedom. It moves me deeply. I salute these champions of religious freedom.

I feel this occasion is very historic. I am not just speaking to the U.S. Congress. I am speaking to history and before God.

God loves America. America's greatness does not lie in her vast resources, nor in her tremendous prosperity, it lies in the very spirit upon which this Nation was founded. That is the spirit of one Nation under God, with liberty and justice for all. However, God's will is not just one Nation under God, but one world under God.

We are all children of God. White, black, yellow, and red are all brothers and sisters—one human family. When we recognize God as our Father, this ideal can become a reality.

Without religious freedom, however, God cannot fulfill His ideal. The Pilgrim Fathers understood that if you do not have religious freedom, you have no freedom at all. They risked their very lives to secure freedom of worship.

Now, that freedom of worship is in danger. A dark spirit of atheism and religious intolerance is found in America today, and this time there is not another "New World" to receive us as refugees. We have no choice but to restore America as the land of religious freedom. If not, this Nation will perish and the world will perish.

In 1971, God called me to come to America and lead a movement to revive the fervor of Christianity and restore the founding spirit of the Nation. God has sent me to America in the role of a doctor, in the role of a firefighter. He has sent me to bring about a dramatic spiritual awakening. The survival of the entire world depends on America fulfilling her responsibility. America is the last bastion of freedom. For the last 12 years I have given my heart and soul and every drop of sweat and tears for the sake of this Nation.

In the process of fulfilling this mission, I have become controversial, and in some quarters, unpopular. And I have been persecuted. However, I am by no means the first religious leader to have experienced persecution. Many of the major religious figures in the Judeo-Christian tradition have walked this path of suffering through persecution. Today, I am honored to follow the same tradition.

I believe that God's hope is for freedom on the Earth, and the greatest threat to freedom today is totalitarianism, particularly in the form of communism, which systematically opposes freedom of religion. Communism has killed more than 150 million people. Many of these were religious people. I myself suffered nearly to the point of death in a Communist prison camp. Communism is the worst inhumanity in the world today.

Freedom has been retreating for the past decade. In 1975, freedom retreated from Southeast Asia. Millions of people perished. Nation after nation in Africa and Latin America has been communized. One and a half billion people have fallen under Communist tyranny. Now Central America, the backyard of the United States, is the frontline of battle. I know that the enemies of freedom will not stop until they achieve their final goal: The conquest of this very Nation, the United States of America.

I supported Ronald Reagan for President because I hoped that he would do God's will to stop the spread of communism, and truly bring this Nation back to God and to her founding spirit. It is disappointing that under this man, who was elected with the treatmendous support of the religious community, the state is encroaching more than ever on the affairs of the church. For the first time, ministers are being jailed. Truly, religious freedom is being dealt a devastating blow.

In the last 12 years, I have done everything I could for America. I have had just one goal in mind: To strengthen the moral fiber of America and enlarge her capacity to fulfill God's will.

Through projects such as the International Religious Foundation, the New Ecumenical Research Association and the Conference on God, I have sought to bring theologians of all faiths together to better understand God and one another.

I have worked to bring God's will into the academic world. The International Cultural Foundation sponsors annual conferences on science and absolute values, and brings scholars together in organizations such as the Professors World Peace Academy, Paragon House Publishers, and the Washington Institute for Values in Public Policy.

In the area of cultural expression, I have endeavored to reinforce the theme of reverence toward God. In the movie Inchon, for example, I have tried to portray the historical importance of Gen. Douglas MacArthur, a great American devoted to God and humanity. It is vital for American young people to have such a hero figure.

Because religious ideals must be expressed in service to humanity, I initiated the National Council for the Church and Social Action, the International Relief Friendship Foundation, and Project Volunteer.

To work toward the liberation of all people from totalitarian ideologies, I established the International Federation for Victory over Communism, the Collegiate Association for the Research of Principles, and CAUSA International.

To set a standard of responsibility in the communications media, we founded the World Media Association and News World Communications, which publishes several newspapers. One of these, the Washington Times, was created to present an alternative view to the Nation's Capital. This project alone cost our movement over $100 million.

These projects have required a vast amount of financial resources, as well as the hard work and loving sacrifices of fellow church members. Several hundred million dollars have been poured into America, because this Nation will decide the destiny of the world. These contributions are primarily coming from overseas. In my movement, the United States has been a recipient, not a source of funds. I have acted from the firm belief that if America is lost, everything is lost. There is no other country that God can turn to.

When you understand the scope of my work, can you really believe that I came to America to defraud the U.S. Government of an estimated $25,000 in taxes?

From the very beginning this was not a tax case. It has been an invasion by the Government into the internal affairs of religion. They chose the Unification Church because they thought that no one would come to our defense. However, this is where they miscalculated. The religious community of America knows that unless everyone is safe, no one is safe. When one is threatened, all are threatened.

When the Government abuses its authority, the consequences are fearsome. It was the Roman State which crucified Jesus Christ. In this country it was the State which burned witches, persecuted Roman Catholics, shunned Jews and prolonged black slavery. It was the State which allowed Joseph Smith, founder of the Church of Jesus Christ of Latter Day Saints, to be killed by a mob in prison. It is the State which is coming after me, and in the process, violating the religious freedom of everyone. We must stop this trend now. If we do not, then who is next?

In the providence of God, the case of Reverend Moon has become a rallying point for religious freedom in the United States. I stand convicted for no other reason than my religious beliefs and practices. I am to be punished for being who I am. This has shocked and awakened the conscience of America. Many religious leaders and believers of all faiths have stood up in outrage. They are registering their protest. Most important of all, they are united. Their unity will insure the survival of America.

The greatest confrontation in the world today is not the United States versus the Soviet Union, capitalism versus socialism, or even democracy versus Communism. It is faith in God, versus the denial of God.

The Communist world, based on atheism, has failed to fulfill the human dream. The free world, on the other hand, has become materialistic and forgotten God, and is helpless in the face of the grave world crisis. The world is dark with confusion. A new vision must emerge—a new world view centered on God. I am teaching that world view, based on God's heart of love, I call it Godism. I proclaim that this ideal will provide a new solution to the world.

Godism can unite all religious people as well as all people of conscience. This world view will bring unity among enemies and enemy nations. This will bring true freedom of the human spirit. This ideal will usher in the realization of the kingdom of God on Earth.

This world view, a system of thought of high dimension, has led many people to personal experience with God. The effect has been so phenomenal, that in some quarters, it was blamed on brainwashing. This is the reason that I have been misunderstood in some established circles and by the media. The Communists, who regard me as their archenemy, have exploited this understanding in their attempt to destroy me.

In spite of these difficulties, I am honored to dedicate myself today to the preservation of religious freedom in this country. If I can raise up a beacon warning Americans of the danger which lies ahead, then my sacrifice will serve a great purpose.

The issue today is the very survival of America and the free world. To assure this survival, I am willing to suffer any indignity, to go any distance, to do any labor, and to bear any cross. I am even willing to give my life, if that will ensure that the Nation and the world survive and do God's will.

Today, I carry no animosity toward anyone. Jesus Christ showed the tradition of forgiveness when he prayed on the cross for those who crucified him. I am upholding that tradition. I, long ago forgave my accusers. I have no hostility toward the U.S. Government.

Instead, I pray for this country. I thank God that He is using me as His instrument to lead the fight for religious freedom and to ignite the spiritual awakening of America in this most crucial hour of human history.

Mr. Chairman, once again, thank you for this opportunity. I would like to conclude by saying, God Bless America.

Thank you.

Senator HATCH. Thank you. [Applause.]

Senator HATCH. Reverend Moon, thank you for your perspective, and for your testimony here today. I think it is very important, and extremely articulate, and I appreciate you delivering it in English, although I know that Korean is a much more familiar language for you. But I do have few questions I would like to ask you.

Based on your experience as a religious leader in many different countries, what is your particular view on the relationship between church and state?

Should there be an attempt to have an absolute separation between church and government, or is some measure of government involvement desirable, in your opinion?

Reverend MOON [through interpreter]. Mr. Chairman, you have touched upon a very fundamental issue, the separation between church and state.

I fundamentally support the separation between church and state. I would like to say, however, there must be always some relationship between church and state. Complete separation is neither possible nor desirable.

The relationship between church and state is analogous to the relationship between the spirit and body of a person. The state, or government, is like the body, while the church is like the spirit. Between the spirit and body, there must be harmonious interaction. It is important that the spirit of a person be in the subject, or initiating position, while the body is in the object, or reponding position.

The people of the country are first of all the children of God. These children of God choose and elect the government to serve them. That is, the government is the servant of the people. The church, in turn, exists in order to nurture the spiritual aspect of the people. As such, it is of primary importance in the lives of men and women. The government, then, must support the church in assisting the spiritual development and well-being of men and women.

Today, however, this relationship has been distorted or reversed. The government is becoming an oppressor of the church. This is like the body trying to govern the human spirit, which is impossible.

This is my basic understanding of the separation between church and State.

[Material submitted for the record follows:]

PREPARED STATEMENT OF THE REVEREND SUN MYUNG MOON

Mr. Chairman, distinguished members of the Subcommittee, members of the staff, Ladies and Gentlemen:

My name is Sun Myung Moon. I am the founder of the International Unification Church.[1] My wife and I have lived in the United States since 1972. We have thirteen children and three grandchildren, ten of whom are citizens of the United States.

I want, first of all, to express my heartfelt thanks to you, Mr. Chairman, and to the members of this committee for the invitation to testify at this hearing on the subject of religious freedom in America. I believe that this is an historic occasion and that my testimony is given not only to the Congress of the United States of America but to history and before God.

Mr. Chairman, on May 14, 1984, the Supreme Court of the United States refused to hear my appeal in connection with my 1982 conviction in the Federal Court on tax charges. I will, of course, abide by the decision of the Court and the laws of this land. I have faithfully done so since my arrival in the United States in 1972.

I was in Korea on October 15, 1981 when the indictment was handed down. I was profoundly saddened by the news. Undoubtedly, there were people who hoped that I might be tempted to remain in Korea to avoid the risk of imprisonment. I am not an American citizen and my native land has no extradition treaty with the United States. However, as a religious leader and a law-abiding resident of the United States, I could not and would not do other than to give concrete expression of my faith in the integrity of the American legal system by returning voluntarily.

As long as the present verdict stands, I cannot regard this case as closed. It is, of course, possible that no further redress is available to me in the courts of the United States and that I shall be compelled to endure a period of imprisonment. Should this happen, I will be both fortified and consoled by the knowledge that I am by no means the first leader of a religious community to be forced to submit to such treatment. The history of religion is replete with examples of religious leaders who have suffered incarceration and worse at the hands of civil authorities. Nevertheless, the final courts are the court of history and, ultimately, the court of God. Before these courts, I have reason to be neither afraid nor ashamed. Moreover, I am proud to stand before you today, for I am free in conscience, free in spirit, and free and innocent before God.

Mr. Chairman, it is my belief that my case was in reality never a tax case. On the contrary, it is an attempt to use the power and authority of the government to harm a new and admittedly unpopular religious movement. Perhaps they chose the Unification Church because they thought no one would come to our defense. However, this is where they miscalculated. The religious community knows that unless everyone is safe, no one is safe. When one is threatened, all are threatened.

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[1] The formal name of incorporation is Holy Spirit Association for the Unification of World Christianity.

It is possible that some government officials were convinced that they were acting in America's best interest in using a tax dispute to bring discredit on a new religious community of seemingly strange origin. Nevertheless, the First Amendment to the Constitution was meant to protect the American people from precisely that kind of interference by civil authorities. It is the proud tradition of the United States of America that no civil authority has the right to interfere with even the humblest citizen's relationship to the Creator.

Since the Supreme Court refused to review my case, there has been a very strong protest by members of the religious community. More than a thousand clergymen -- Jewish, Christian and Islamic -- have pledged to commit one week of their lives in prison with me in the name of religious freedom. This moves me deeply. I salute these champions of religious freedom.

My Life and Mission

I was born in a rural community in North Korea on January 6, 1920. My family was a devout and traditional Buddhist family. When I was ten years old, together with my entire family, I became a Christian. Korean people have a deeply religious nature, and they have received the Christian Gospel with faith and reverence. Of all the nations on the Asian continent, none has been as powerfully influenced by North American missionaries or turned to Christianity in such great numbers as my native land. Indeed, students of contemporary religion have predicted that by the year 2000, the Republic of Korea will become the first nation with a Confucian heritage to achieve a Christian majority. More than anywhere else in Asia, Christian missionaries have reaped a very rich harvest in Korea.

As a young person, I had a strong inclination to seek justice and give comfort to others, but the true turning point of my life came on Easter Sunday April 17, 1936. Jesus appeared to me while I was deep in prayer on a Korean mountainside. I spent the next nine years praying and desperately studying the Bible.

I am fully aware of the fact that in a secular age many people in both the East and the West may find my experiences difficult to believe or even to understand. This comes as no surprise to me, as I have been trained in the methods of scientific rationality, having studied electrical engineering at Waseda University in Tokyo. Furthermore, I can appreciate the fact that for many people revelation is understood to be something remote and found only in written records of past events, rather than a personal experience. My experience, however, like that of other religious men and women, is with the Living God, with whom we can and must each have a direct relationship.

As I came to know the will of God and His ideal of love, I realized that it was not just in heaven but also on the earth that His ideal and His will are to be fulfilled. This had, of course, first been understood by Jesus who taught us to pray, "Thy Kingdom come, Thy will be done, on earth as it is in heaven."

"Fulfillment of God's will on earth" has been the central and ultimate mission to which I have dedicated my life. All of my activities throughout the entire world during my entire career have been undertaken to fulfill this goal. I solemnly testify that neither suffering, nor worldly rejection, nor persecution, nor even incarceration can deter me from my mission and my calling. I am not afraid of whatever God requires of me. Moreover, there is no price that I would be unwilling to pay in order to be faithful to His calling. If God asks me, I know of only one response, obedience.

It is my belief that God is and has ever been humanity's true Teacher, and that He has instructed us through the inspired teachers and leaders of the religions of the world both East and West, North and South. I further believe that the Judeo-Christian tradition has been a decisive vehicle of God's teaching. Jesus Christ came in that tradition as the Messiah and fulfillment of the scriptures, and established Christianity as the central religion of God's providence. Through that tradition, we have learned of humanity's Fall and of God's efforts to restore fallen humanity to its original purpose, which is also the original purpose of Creation, namely, to establish the Kingdom of God on earth.

Many people have had the desire to establish God's Kingdom. Like others committed to this ideal, I have sought to bring about God's Kingdom by deeds as well as by words and faith. I did not come to America seeking a secure haven from religious or political persecution, nor did I enter this country in search of economic opportunities barred to me in my native land. I came for only one reason: God called me to America.

I love America because God loves America. America's greatness does not lie in her vast resources, nor in her tremendous prosperity. It lies in the very spirit upon which this nation was founded. That is the spirit of one nation under God, with liberty and justice for all. We are all children of God. White, black, yellow and red are all brothers and sisters -- one human family. When we recognize God as our Father, this ideal can become a reality.

There has always been within American history a central group of men and women determined to do God's will. Among the forefathers of America were those who came seeking wealth, but also others who came seeking God and freedom. Based on their faith, the miracle of America has occurred. In spite of its brief history as an independent nation, America has become the world's most powerful nation and the ultimate defender of all the nations that value freedom throughout the world.

There are those who contend that America's growth and material prosperity have no religious significance. On the contrary, it was the will of God that America prosper as a people under God, but this prosperity is not for the sake of America alone. America has a providential role to create a model for the Kingdom of God on earth: a multi-national, multi-racial harmonious human community united by God's love.

As a nation chosen by God, the fidelity of the American people did not go unnoticed or unrewarded. No nation has been as blessed by God, materially and spiritually, as has America. Unfortunately, many of today's citizens do not understand that America's prosperity did not derive solely from human effort, but was the consequence of God's blessing -- a blessing given to America to be used for the sake of the world.

Consider how powerful America was throughout the world immediately after World War II. At the time, religious influence was a powerful force within the nation. In the world at large, American influence, centering on faith in God, was supreme. When we ask how was it possible for any country to rise to such power and influence in so short a time, there can, in my opinion, be only one answer: God made it possible. He did so because He wanted America to play a central role in the fulfillment of His will throughout the world.

Regrettably, in recent years, large sectors of American society have turned away from God. They have forgotten the spirit of her Founding Fathers. The seriousness of America's predicament has been compounded day by day and hour by hour. We behold the spread of crime, the decline of rectitude, rampant child abuse, broken families, large scale drug abuse, impersonal education with declining standards, pornography and immorality. All these things are tragically far from the will of God. Such a situation in a country of so much promise breaks the very heart of God. I know that God cannot proceed with His providential design if America remains as it is. Without repentance America will decline. History teaches us that America is not different than any other of the so-called "great civilizations" that were called to repentance by prophets, saints and sages. A spiritual awakening must occur. America must survive and prosper not for her own sake alone but for the entire world. It is imperative that America repent and renew her convenant with God and her commitment to the world.

I testify to you today that God has sent me to America. I came here as a messenger of God's blessing and love for this country. I must also testify that I have been sent to warn America that she must fulfill her global, providential mission. Like a fireman or a surgeon, I have come to heal not to harm, to find a solution to an emergency situation that threatens not only America but the world that depends upon her. This is the purpose of the Unification Movement in America.

Many young people have experienced a dramatic change as a result of their encounter with this movement and its teachings. It is natural that a change accompanies the experience of religious conversion. When egoism is replaced by a loving concern for others, is there not a profound change? When chastity replaces promiscuity, is there not a deep change? When a young man or woman without the gift of religious faith receives that gift, is there not a significant transformation? What could make such things possible? The answer is really simple and has been known to religious men and women throughout the generations: God has the power to transform us and give us spiritual rebirth. A teaching ultimately centered on God can make possible many things thought to be unbelievable in ordinary experience. One has but to open one's heart to God!

As I have stated, my mission is one of both words and deeds. Without the foundation of His word, God's Kingdom cannot be established, but words are not enough. Since coming to America, I have initiated many activities, movements and institutions for the purpose of a new spiritual revolution in America. Inspired by this ideal, I have endeavored to lay the spiritual foundations for America's return through deep and often tearful prayer. Guided by God's spirit, I have sought to educate people through sermons, counseling, lectures, prayer meetings and revival meetings. Moreover, I myself have sought to live the ideals which I have taught.

Mr. Chairman, at this point, I would like to offer the committee and the people of America an account of my activities with special reference to those which I have initiated since my coming to America. I began my preaching mission in June 1946 in Pyongyang, currently the capital of communist North Korea but known then as the "Jerusalem of the East." I was twenty-six years old at the time and progress was slow, difficult and painful. In February 1948 the communist authorities arrested me on absurd political charges and sent me to a prison camp in Hungnam. I endured two years and eight months of bitter and brutal incarceration in that camp. Conditions there were so poor that most other prisoners died within a few months, but I never lost my faith in God nor my resolve to fulfill the mission He had bestowed upon me.

On October 14, 1950 I was liberated from prison by United Nations forces and later made my way on foot to Pusan, six hundred miles to the South. I was accompanied by two disciples, one of whom was unable to walk because of a broken leg. This companion rode on a bicycle which I pushed along, sometimes carrying him on my back when we had to cross rivers or walk through the sea. We were among the last people to be able to leave the North before the Red Chinese overwhelmed almost the entire country.

In Pusan my church and shelter was a hut which we constructed out of mud and U.S. Army ration boxes in the summer of 1951. I supported the early church activities by working as a dock laborer. It was from these beginnings that the Unification Church has grown.

On May 1, 1954, I established in Seoul, Korea, the Holy Spirit Association for the Unification of World Christianity which has become known as the Unification Church. Four years later our first missionary went abroad to our nearest neighbor, Japan. The following year, 1959, Dr. Young Oon Kim went to the United States to begin our mission in America. By 1966 there were missionaries in 40 different countries. Today our missionaries are to be found in more than 130 countries. It is our custom to send out missionaries in teams of three: one from Europe, one from America, and one from the Orient. We do this to set an example of international cooperation.

I came to the United States in 1972. In that same year, I founded the International One World Crusade (IOWC) to bear witness to God and to the providential mission of America. Church members travel throughout America seeking to inspire men and women of every age with a new vision of the future and a new hope. One goal of the IOWC is to revitalize the American spirit of idealism and the traditional American commitment to hard work. With a primary focus on ecumenical work, IOWC teams lead inspirational rallies, speak on college campuses, sponsor cleanup campaigns, and make frequent radio and TV appearances. As a result of the IOWC, many religious revivals have taken place. Members of each IOWC team consist of a unique group of men and women of North American, European, Asian, African, and Latin American background. By their labor and their very composition, our teams demonstrate the love, unity and hope that can be realized when people of different origins join together as one family under God.

The work of our missionaries throughout the world and of the IOWC in the United States corresponds to the traditional forms of evangelical outreach sponsored by most Christian churches. In addition to these traditional projects, and inspired by the Unification teaching that God-centered individuals must enter into every area of human existence to work for the Kingdom, the members of the Unification Church have initiated many activities and institutions which go far beyond the boundaries of traditional church work. These activities have included the following:

I. The International Cultural Foundation (ICF)

The ICF is dedicated to promoting academic, scientific, cultural and religious interchange among the peoples of the world. Among its many activities are:

a. The International Conference on the Unity of the Sciences (ICUS): This year the twelfth annual meeting of ICUS will be held in America's capital city. Since the first ICUS in 1972, these conferences have annually brought together hundreds of scientists and scholars, including an uncommonly large number of Nobel Laureates, from every area of study and research, to discuss the mutual interactions of their research and to seek ways to apply their findings to the solution of the problems confronting the contemporary world. Of special importance to the work of ICUS are the discussions concerning the relationship of science and morality. Although the scholars and scientists invited to ICUS represent every responsible point of view, it is my belief that science cannot be indifferent to values and that it is God's will that science be dedicated to human betterment. The goal of ICUS is the clarification of absolute values and the redirection of contemporary technology for the good of humanity. Many of the papers presented at ICUS have been published as scholarly and scientific papers and books and have been very favorably received by the scholarly community.

The convening of a conference such as ICUS with invited participants from every part of the globe is, of necessity, an exceedingly expensive enterprise. It has been made even more expensive recently by our decision to bring together those invited to write papers for two preliminary sessions to review each other's draft presentations and to sharpen their own work through the dialogue that takes place at these meetings. We have willingly spent over $2,000,000 a year on this project. It is my conviction that the Kingdom of God requires the wholehearted cooperation of men and women of faith, science and scholarship.

b. Paragon House Publishers: As ICUS accumulated a wealth of valuable scholarly research that merited presentation to a larger scholarly and scientific audience, we began to publish proceedings, papers and larger works under the ICUS imprint. Several years ago, we realized that the task required an independent institution which would not only publish the papers and books presented at ICUS and other scholarly and scientific gatherings sponsored by organizations supported by the Unification Movement, but would publish other books of enduring worth as well. Consequently, I have founded Paragon House Publishers with a fully professional staff and offices in New York.

Paragon House will publish annually at least one hundred scholarly, scientific and theological books written by the finest minds from every corner of the earth. In addition, Paragon House will also republish classics of enduring worth in the humanities and pure science. To assure that we maintain our high standards, we have invited academicians from Oxford, Harvard, Columbia, the University of Chicago and many distinguished European and Asian universities to serve as an international board of editorial advisors. Although this is our first full year of operation, we expect to publish thirty books this year and one hundred next year. We have set aside an initial budget of $1,000,000 for the operation of Paragon House.

Here again, the work of Paragon House must be seen in its relation to my ministry. It has been said, "Of the making of books, there is no end." There would be no reason for me to establish yet another publishing house as a profit-making venture. Paragon House exists specifically to encourage and promote God-centered scholarly work.

c. The Washington Institute for Values in Public Policy: Building the Kingdom of God requires the solution of the real problems confronting us in this age of international interdependence and high technology. These can only be solved by disciplined research undertaken by the finest experts in each field relevant to public-policy decision-making. To that end, I have established a public-policy research institution, a "think-tank," in the city of Washington. The Institute is an independent corporation with a board of trustees consisting of distinguished Americans. Although the Institute is only two years old, it has commissioned research into such areas as the peaceful use of nuclear energy, disarmament, America's relations with the nations of the Orient, Federal fiscal and budgetary policy, the crisis in Central America, the future of America's relations with its NATO allies and the Soviet Union, and the problems of constitutional law.

A number of the findings of the Institute's experts have already been published and have had an excellent reception among the decision-makers who constitute the Institute's target audience. It is expected that the book-length monographs of scholars and other experts commissioned by the Institute will be published jointly by Paragon House and the Washington Institute Press.

Although the Institute is an independent institution with the same tradition of academic freedom to be found at most of the academic and research centers established by America's religious institutions, we have committed ourselves to support its program in the amount of $2,000,000 for the current year.

d. The Professors World Peace Academy (PWPA): PWPA is an interdisciplinary fellowship of scholars who are concerned with the crisis of modern civilization and who meet regularly to formulate new ideas and to suggest new methods of realizing the ideal of world peace. PWPA had its beginnings in a friendship meeting between professors in Korea and Japan in 1972. The purpose of the meeting was to establish a basis for scholarly and intellectual cooperation between the scholars of these two neighboring nations which have had so bitter a history of national hostility but whose cooperation is indispensible to world peace. As a result of this highly successful meeting, PWPA-Korea was founded in May, 1973 and PWPA-Japan in September 1974. PWPA-USA was founded in 1978. Today thousands of academics throughout the world are active in PWPA. PWPA has grown into an international organization with chapters in North America, Asia, Europe, Africa, Oceania, Latin America and the Middle East.

In December 1983, representatives of PWPA chapters in seventy-two nations met in Seoul. PWPA is truly an international network of scholars dedicated to world peace.

As with ICUS and the Washington Institute, members of PWPA have addressed the problems confronting the international order in their full complexity and in complete academic freedom. The findings of these scholars have already resulted in the publication of many highly-praised volumes in English, German, Japanese, Korean, French and other languages.

e. Financial support for research institutions: In addition to providing for the financial support of the above institutions, our movement has provided the funds to support research undertaken at such institutions as Stanford University, the University of Connecticut, the Institute for Energy Analysis at Oak Ridge, Tennessee and the Rutgers University Law School.

f. Seminars for professionals: The International Cultural Foundation has also promoted seminars for attorneys and other professionals for the promotion of human values and human rights, domestic and worldwide, as well as sponsoring seminars for leaders in the world of business and finance in order to promote a humane, moral and God-centered economic order. To date, there have been three seminars for lawyers and three for business leaders respectively.

II. The International Religious Foundation (IRF)

It has been an important part of my mission to foster world peace through religious dialogue among leaders of the world's religions. It is God's will that unity of purpose and spirit replace discord in the relations of the religions of the world. To that end I have established the International Religious Foundation. Among its projects are the following:

a. New Ecumenical Research Association: New ERA was founded in New York City in March 1980. It had its origins in a series of conferences on special themes related to interdisciplinary research in the field of religion. These have included international conferences attended by sociologists of religion, historians of religion and theologians of every major religious tradition -- Eastern, Western and African.

Perhaps the most important series of conferences sponsored by New ERA are the annual international conferences on "God: The Contemporary Discussion" which were initiated in 1981. Each year several hundred scholars representing all of the major religious traditions of the world are invited to present papers on every aspect of the meaning and consequences of the belief in God. It is doubtful that anywhere else in the world do scholars representing all of the major religions come together on a regular basis for the purpose of religious scholarship and mutual understanding. A number of books have already been published as a result of the conference. Since every participant is required to submit an original paper and the scholars are of preeminent international standing, it is expected that a large number of highly significant scholarly works in the field of religion will be published for New ERA by Paragon House Publishers in the future.

The policies of New ERA are governed by an international board of consultants drawn from distinguished scholars in the field of religion in the United States, Canada and Great Britain. As with all projects sponsored by the Unification Church, the composition of the board of consultants does full justice to the diversity of religious and ethnic backgrounds to be found among the major religions. Also, as with our other projects, the activities have resulted in the publication of many volumes and scholarly monographs. With the establishment of Paragon House Publishers, New ERA has entered upon a large-scale program of joint publication of quality books representing the full spectrum of religious and theological opinion.

b. Youth Seminar on World Religions, World Youth for God: In July 1982, 150 university students and professors from thirty countries, representing the major religious traditions of the world, embarked on a "spiritual pilgrimage." The idea for what has now become an annual event came from the first international conference on "God: the Contemporary Discussion" held in 1981. Now in its third year, the Youth Seminar's participants make a seven-week, round-the-world tour of nine countries in order to study Buddhism, Christianty, Confucianism, Hinduism, Judaism, Islam and Unificationism. They learn about the major doctrines and institutions of the world's great religions from the traditions' leaders and thinkers at each tradition's religious center. For example, in Istanbul the group was privileged to meet the Greek Orthodox Patriarch who commented that he believed this kind of project ought to be funded by every religious group, but that, regrettably, he had been unable to do it on his own.

It is my belief, however, that God desires religious harmony and that this harmony must begin with the younger generation. It was amazing to see how the walls of suspicion and mistrust disappeared as the pilgrimages progressed, how many friendships were made across religious lines, and how sorry the members of the group were to take their leave of each other when the pilgrimage was over. This year we have the problem of selecting from a very large number of highly qualified applicants. Regrettably, we cannot take them all. Many will be turned down who deserve to participate.

c. The Interdenominational Conferences for Clergy (ICC): The purpose of ICC is to promote the sharing of insights, knowledge and experience among the clergy of all American religious groups. It is hoped that these conferences will provide a basis for cooperative social action and reconstruction as well as improved pastoral care. Hundreds of clergymen of all denominations have attended regional seminars throughout America which featured topics of ecumenical concern.

III. Social Service Activities

a. The National Council for the Church and Social Action (NCCSA): The NCCSA was founded in 1977 by a coalition of members of the Unification Church and Christian ministers. It is primarily concerned with the problems of America's inner cities. The NCCSA seeks to involve the religious community in positive social change and sponsors many programs serving the needs of the inner city areas of the nation. Among the programs of the NCCSA are its food bank, housing counseling, and elderly assistance programs.

One branch of the NCCSA, the Washington Council for Social Action, has been responsible for the distribution of millions of dollars of food, clothing, building materials and other items useful to a significant proportion of the 250,000 people in the Washington area living below the poverty line. The WCSA is also involved in a program of active cooperation with more than 100 Washington-area service agencies, primarily sponsored by religious organizations. These include soup kitchens, homes for destitute women, day-care centers, senior citizens' programs, and drug and alcohol rehabilitation centers. WCSA acts as a distributor and clearing house for major companies and government agencies which have surplus food and other products to offer but find it impossible to distribute their offerings on an individual basis. The WCSA takes the responsibility of seeing to it that the surplus reaches those inner-city organizations who in turn are responsible for its distribution to the needy.

Similar programs are now under way in Los Angeles, New York, Atlanta, Baltimore, Boston, St. Louis, Jackson, Mississippi and other cities. Recently, the NCCSA contracted with the Chevrolet Division of the General Motors Corporation for the purchase of 200 trucks to be used in this work. I am happy to be able to support NCCSA in making this contribution to America's needy.

b. **The International Relief Friendship Foundation (IRFF):** In 1980 I founded the IRFF as a public, non-profit agency working to eliminate poverty, malnutrition, and disease from the face of the earth. IRFF supports projects designed for long-term development assistance, especially in the lesser developed nations of the Third World. Initial research, planning, and implementation of these projects is carried out by IRFF representatives in Asia, Latin America and Africa. IRFF programs include: (a) Rapid Deployment Medical Teams of doctors and nurses who work in refugee camps, local villages, and areas where extreme famine, poverty and disease have disrupted normal life. Travelling in rural villages, the teams have established clinics in which they teach hygiene and preventive medicine and provide invaluable health care. (b) Emergency Relief Programs: When sudden disasters create situations of desperate need, IRFF quickly seeks distribution networks to send medicines, blankets and necessary food. Among the countries to which relief supplies have been sent are Bolivia, Equatorial Guinea, Guyana, Jamaica, Dominican Republic, Upper Volta, Haiti, Ghana, Zaire, Peru, Thailand, Paraguay and Honduras. (c) Agricultural and Technical Training: Recognizing that emergency relief does not improve the conditions of lesser developed countries, IRFF has embarked on long term development programs involving training in modern agriculture and technology.

The focus of these programs is the implementation of a basic understanding of irrigation, crop rotation, farm management, animal husbandry, and fish farming through actual field work. Proper vocational training also develops skills in manufacturing appropriate tools, welding, repair and maintenance of vehicles, pumps, and small motors, all of which are exceedingly important for improving the conditions of life in lesser developed countries. These training programs lead to the creation of village cooperatives, a sharing of financial aid and technical ability, and the creation of hope for the future where there was none.

c. Project Volunteer (PV): Project Volunteer distributes millions of pounds of surplus foods, medical supplies and other needed materials to a network of over 300 community-based charitable organizations. PV has been working to establish the channels by which the surplus resources here in this country can be funneled to the areas of this and other nations which are in desperate need.

IV. The Struggle Against Communism

Having been a prisoner of a tyrannical communist regime for almost three years, I have direct experience of what communism in power means to those caught in its web. My opposition to communism is the result both of my direct personal experience and my religious convictions. I believe communism to be among the worst enemies of God and humanity.

I have, therefore, been immensely saddened by the fact that many idealistic men and women in the Free World, especially young people, have been misled by communist ideology. I have sought to establish and support institutions which will better prepare the Free World to defend itself against the religious, cultural, political and military threat of communism.

Marxists do address real problems. Unfortunately, their atheistic and violent measures create situations far worse than the original problem. Nevertheless, I believe that the solution to communism can only come when we solve the problems of poverty and social inequity which the Marxists challenge.

a. International Federation for Victory Over Communism (IFVOC): I founded the IFVOC in Korea and Japan in 1968. IFVOC has systematically conducted educational activities in the villages, towns and cities of Korea. This is absolutely essential for the survival of the country. The Korean young people did not personally experience the barbarism of the Korean war, and without clearly understanding the communist ideology, they are apt to lose their awareness of the threat posed by the Soviet-supported North Korean communists. A repetition of the war of 1950-1953 would be an unthinkable tragedy for Korea today. The activities of IFVOC fortify the Korean people to prevent such a war.

In Japan, the activities of the IFVOC are equally vital, and equally impressive. The IFVOC movements of Korea and Japan count a membership of 7,000,000 and 7,500,000 members respectively.

b. CAUSA International: In 1980, I created CAUSA International in response to an acute and immediate need: the need to provide an ideological framework for Latin America in its struggle against communism.

As the work of CAUSA has progressed, it has become active all over the Western world. National chapters have been established in South, Central and North America, Europe and Asia. Plans are being made to extend the work into Africa. CAUSA USA, with headquarters in Washington, DC, expects to have chapters in all 50 states by the end of 1984.

CAUSA, the Latin word for "cause," symbolizes the common cause and aspiration of all free men. CAUSA conducts seminars in which Marxism-Leninism is examined and sharply critiqued as a social failure and as a grievously flawed doctrine. This work is vital in Latin America, for it is especially here that communists are able to intensify legitimate social and economical grievances and misdirect these toward the destruction of governments struggling to achieve genuine representative democracy.

CAUSA is much more than another anti-communist organization, however. CAUSA teaches Godism, a worldview based on God's heart of love. Godism provides fundamental principles which, when applied, can work toward healing the social fabric and prompting accelerated economic development. Godism supports the common beliefs of God-affirming people, and inspires them to fulfill the ideals of their respective faiths.

The CAUSA Institute, located in New York, conducts ongoing investigations into communist strategy and operations and is responsible for training instructors and providing instructional materials for educational programs. The Institute publishes texts and other books, magazines and bulletins in English, Spanish and French.

c. The Collegiate Organization for the Research of Principles (CARP): Mindful of the effectiveness of communism in securing the commitment of idealistic students in the universities of the free world, we founded CARP as an important aspect of our mission to revitalize the spirit of free thought in the world. If communism is successful in the universities of the Free World, there would in the long run be little hope for the survival of freedom. CARP's goals are to revive the Christian tradition, combining intuition and intellect as well as religion and science; to build an ethical foundation for student life; to present a positive counter-proposal to the atheistic and materialistic lifestyle so often to be found on the campuses of the free world; and to foster love of the world community as well as enthusiasm to carry out one's mission in life.

CARP is active on over 100 campuses in North America and several thousand campuses around the world.

V. Establishing Standards of Media Responsibility

a. The World Media Association: A journalist wields tremendous power over the minds of the public.
The World Media Association is a worldwide association of communications scholars and professionals dedicated to ethical and responsible journalism. The Association, headquartered in Washington, DC, sponsors the World Media Conference, which brings together journalists and media executives from every part of the world to form working relationships and discuss timely aspects of media responsibility. The Association also sponsors numerous fact-finding tours to trouble spots of importance to world peace and stability. Tours have been undertaken to Central America, Europe, the Far East, and twice to the Soviet Union. These tours have provided background information to participants and yielded a wealth of articles.

b. New Publications: As I have stated, my mission is to work for the survival and prosperity of America so that God's plan for America and the world can be fulfilled. Because neither America nor any other nation can survive in freedom without a responsible press that fully appreciates the threat of communism, I am working to create publications which embody the God-centered ideals of the religious tradition and set standards of media responsibility. In 1975 I founded a newspaper in Tokyo, Sekai Nippo. The following year I established The News World, now the New York Tribune. Since then, I have created a number of publications throughout the world including the Hispanic newspaper Noticias del Mundo in the United States, Ultimas Noticias in Uruguay, a weekly in Korea, and Free Press International, a world-wide news service.

My greatest media challenge came when I realized that unless I acted, the capital of the most powerful nation on earth would remain a one-newspaper town. When Time, Inc. could not prevent the demise of The Washington Star, I hoped that some patriotic Americans would establish a second newspaper to offer alternative views to the nation's capital. However, it became apparent that no profit-motivated business corporation would attempt to establish a newspaper in Washington. Out of my deepest religious convictions, I determined that no matter what the cost, Washington must have a second newspaper. I therefore worked with others to establish The Washington Times.

Whether you are liberal or conservative, you can surely appreciate the need for the expression of an alternative point of view. To date that project has cost our movement well over $100,000,000.

VI. Minority Alliance International (MAI):

In 1981, I created Minority Alliance International as an organization which would safeguard the civil and religious rights of individuals. MAI aspires to forge an alliance of minority organizations upon the common recognition of inalienable human rights, particularly the freedom of worship. Through the combined efforts of these groups, centered upon the clear ideology of Godism, I believe that bigotry can be completely eliminated from the world.

Minority Alliance International champions the cause of individuals and groups which are victims of persecution. Seminars have been conducted in which ministers and concerned citizens are made aware of threats and brought together in dialogue to create solutions to the problems which they face. MAI is also working to develop general education programs to expose the deleterious effects of bigotry on societies throughout the world.

VII. Educational Activities

Proper education is fundamental to genuine religion and the truly religious way of life. The Unification Movement has initiated a far-reaching educational program involving institutions of elementary, secondary and advanced education throughout the world.

I am the founder of the Little Angels School for the Performing Arts in Seoul, Korea. The Little Angels School has 3,600 students of both sexes from kindergarten through senior high school. The physical plant of the school is one of the most modern and best equipped in the world. In size, capacity, and beauty, it compares favorably with the campuses of many small American liberal arts colleges. Enrollment is open to children of all faiths and the record of achievement is exceedingly high. I also support many other schools at various levels and have offered scholarship aid to many students of varied religious backgrounds.

In the United States I have founded the Unification Theological Seminary in Barrytown, N.Y. The Seminary has an international student body and a distinguished faculty consisting of Protestant, Catholic and Jewish scholars as well as members of the Unification Church. Although the Seminary is very young, many of its students have been accepted in doctoral programs at Harvard, Yale, Princeton, Drew, Columbia, Chicago and Claremont, where they have consistently been recognized as among the best students in their respective classes.

We have also offered full scholarships which allow promising students to attend the divinity schools of Yale, Harvard and other fine institutions. We are confident that many of them will become future leaders of this society.

Finally, we have plans to create a worldwide network of seventy universities at which an international student body will pursue their studies in preparation for the ever more interdependent world of the technological age. Professors will not only be able to serve in their own country but will be able to serve as exchange professors, thereby contributing to international understanding and furthering the cause of world peace.

To those who question whether such ambitious projects are possible, I point out that I began my mission in a crude, handmade hut with only a handful of disciples. It would have been far more difficult for an observer at the beginning of my mission to have foreseen the progress which has already been made, than for someone to agree with me today that such plans as these are realistically possible.

VIII. Ocean Church

One activity that is particularly close to my heart is the Ocean Church Movement. At a time when ever fewer young Americans are choosing to make their livelihood from the sea, I have encouraged my disciples to regard the sea and the people who work on the sea not only as the most important source of food in a world rapidly growing in population, but also as a vital area of spiritual ministry. We maintain ocean churches in America's principal seaports. In the future, our members will be able to cooperate with Coast Guard officials in the fight against drug smuggling.

IX. Arts and Culture

I have also sought to promote the performing arts, supporting performing arts teams, maintaining performing arts organizations, and attempting to reform the decadence which constitutes so great a part of the entertainment industry. The Little Angels Performing Arts School is itself an outgrowth of a project which I initiated, the Little Angels Childrens Folk Ballet. The Little Angels were organized as ambassadors of good will from my homeland of Korea, and they have travelled all over the world sharing the beauty of traditional Korean dance, song and dress. They have performed before numerous heads of state, including United States presidents and the Queen of England.

As is well know, I inspired the film "Inchon." The movie cost the Unification movement millions of dollars. Certainly profit was not our motivation in producing the film. I wanted to recall to Americans, especially young people, the heroic determination of General Douglas MacArthur who was a humanitarian, an anti-communist, and a devout believer in God. As a Korean who was liberated by United Nations forces under his command, I am especially aware of General MacArthur's contribution to the preservation of the Free World. Had all of Korea been conquered by the communists, it is very likely that the tremendous technological capacity of the Japanese and the Korean people would today be in the service of those committed to the destruction of America and the world's freedom. It would have been impossible for Japan to remain America's ally had the communists permanently seized all of Korea. I want every American to appreciate what General MacArthur and his forces accomplished against overwhelming odds for all of us.

X. Other activities

The list of the activities of the Unification movement is long and worthy of detailed elaboration. However, I will not attempt to enumerate them further in the present context.

XI. Misunderstandings about the Unification Movement

These projects have required a vast amount of financial resources, as well as the hard work and loving sacrifices of fellow church members. Several hundred million dollars have been poured into America, because this nation will decide the destiny of the world. These contributions are primarily coming from overseas. In my movement, the United States has been a recipient, not a source of funds. I have acted from the firm belief that if America is lost, everything is lost. There is no other country that God can turn to.

When you understand the scope of my work, can you really believe that I came to America to defraud the United States government of an estimated $25,000 in taxes?

Obviously, the IRS could only behave in such a manner because I am the leader of a religious movement which some Americans look upon with disfavor. I am saddened by this phenomenon and trust that it is only temporary. Regrettably, few Americans know accurately the history of my work. I must sadly report that the news media have all too frequently depicted my mission and the work of the Church in a distorted and sensationalized manner. I am also saddened that I have been misunderstood even in the Christian Churches. It is my fervent hope that, based on Godly fellowship, interfaith dialogue can dispel any misunderstandings. I am especially grieved at the allegations of "brainwashing." Sincere religious conversion often brings about profound changes in personality. This turning from selfishness to unselfishness is not brainwashing, but an awakening to the reality of God's love and God's purpose.

It is easier for me personally to bear such calumny than to behold it directed toward my disciples. Today, the very name, "Moonie" conjures fear and suspicion among many Americans, but what is wrong with these God-centered men and women? Have their critics carefully evaluated the way Unification Church members live or the values that motivate them? Unification Church members see history from a comprehensive viewpoint and identify themselves as true sons and daughters of the Living God working for the redemption of humanity. When impartial historians and sociologists of religion have studied the life-styles of members of the Unification Church, they have uniformly found men and women whose lives are God-centered, loving, decent and sacrificial.

Furthermore, the piety of the Unificationists has never been in conflict with their intelligence or their learning. At Harvard, Yale, Berkeley, Princeton, Columbia, Chicago, Vanderbilt and America's other great centers of advanced study, Unificationists have consistently distinguished themselves by the exemplary character of their scholarship. Why is it that newspapers which do not hesitate to level the charge of brainwashing against the Unification Church never report on the many Unificationist doctoral candidates and PhD's who have led their classes and won the deep respect of their non-Unificationist peers? In reality, if all of the world's young people were like "Moonies," I have no doubt that this world would be changed for the better.

Unfortunately, those who have been quick to malign Unificationists have ignored the way Unification Church members have all too frequently been denied the freedom of religion guaranteed to all Americans by the Constitution. Permit me to offer but a single example other than my tax case: Most Americans assume that they are free as adults to elect to follow any religious tradition they wish. Very often, that right has been denied to members of the Unification Church. Lest I be misunderstood, I want to stress the fact that I am referring to intelligent adults over twenty-one years of age. I must sadly report that in hundreds of instances the most elementary American freedom, freedom of religion, has been denied to Unification Church members. Instead, kidnapping, a crime sufficiently grievous to carry the death penalty under the Lindberg Law has been redefined as "deprogramming" in the case of certain religious movements including the Unification Church. Criminals have been permitted by civil authorities to make a prosperous living forcibly seizing adult members of the Church against their will and imprisoning them in private centers of incarceration for as long as is deemed necessary. They have used techniques of mental torture and even physical assault to break their spirit and compel them to recant their religious conversion. If anyone is guilty of brainwashing, it is the criminals who have made a profession of seizing and incarcerating our members.

Nor are the courts without responsibility in the deliberate denial of religious freedom to members of the Unification Church. In a number of instances, courts have appointed conservators, a legal measure normally reserved for mentally disabled elderly people, to control their lives until they give convincing evidence of their willingness to recant their religious commitment. Of course, the courts could not resort to such tactics were it not for the willingness of a few psychiatrists and so-called mental health professionals to abuse their professional status by labelling conversion to the Unification Church, unlike conversion to any of the mainstream churches, as a form of mental illness.

It is a moral and legal disgrace that some psychiatrists have the legal power to determine which traditions can be regarded as "normal" and which are to require "therapy," thereby imposing their religious views, or lack of them, on members of the religious community. When KGB psychiatrists in the Soviet Union abuse their profession by condemning dissidents to so-called "mental institutions" and labeling dissent as "insanity," Americans are indignant over this abuse of human rights. When American psychiatrists behave in precisely the same way towards the Unification Church members, all too few Americans see the dangerous parallel.

In both cases, psychiatry has ceased to be a healing science and has become a vicious instrument of mind-control and incarceration.

The fundamental issue ought to be obvious to all Americans: Who, without recourse to God, can judge the genuineness of anyone's faith? Are the courts and morally arrogant psychiatrists to become the ultimate tribunal of true religion in America? I am immensely saddened, not only because the Unification Church is persecuted, but because the decisions made against us by the courts and by some civil authorities are truly contrary to everybody's freedom to worship God.

Conclusion

When we consider the entire scope of human history and the providence of the Living and Invisible God, it is obvious that those who are against God are destined to decline while those who turn wholeheartedly to God will prosper. There is nothing new in this insight. It is certainly not mine alone. My words contain an ancient truth proclaimed by the prophets and saints before me.

Unless we repent and turn wholeheartedly to God, we will not be able to withstand and turn back the rising materialism, hedonism and atheism of a secular age. One half of the world is now under communist totalitarianism, while the Free World is also in danger of turning away from God and towards self-centered, self-aggrandizing, atheistic humanism. While the materialistic communist world offers humanity no hope, without God the Free World can offer us no hope either. Indeed, as bitterly as I have opposed communism, I recognize that capitalism without God is as empty of value as communism. Godless, self-centered men and women concerned only with their material aggrandizement would be wholly indifferent to any but the most selfish, egoistic concerns.

The communist world, based on atheism, has failed to fulfill the human dream. The free world, on the other hand, has become materialistic and forgotten God, and is helpless in the face of the grave world crisis. The world is dark with confusion. A new vision must emerge -- a new worldview centered on God. I am teaching that worldview, based on God's heart of love. This is Godism. I proclaim that this teaching will provide a new solution to the world.

Godism can unite all religious people as well as people of conscience. This worldview will bring unity among enemies and enemy nations. This will bring true freedom of the human spirit. This ideal will usher in the realization of the Kingdom of God on earth.

In this respect, it is important to note that I have never denied the importance of people's material needs. God created all things for humanity. If we live God-centered lives, the world will be ours to enjoy. According to Godism, no individual can in a self-centered manner stand by himself. Each and every person must rely on the ultimate Cause of the universe. Only through God-centered, loving, sacrificial relationships can we have the eternal happiness God desires for all of His children.

In conclusion, I would like to express my appreciation for the rallies on behalf of religious freedom which were held in every major American city when it became known that the Supreme Court refused to hear my appeal. Thousands of Americans participated and clergymen of Jewish, Christian, and Islamic backgrounds voiced their emphatic protest against the abuse of religious freedom in contemporary America. These rallies are not a passing phenomenon. They are taking place because that is God's will. A new movement for religious freedom, supported by interreligious solidarity, came into being blessed by God. I intend to move to the forefront and lead this movement for religious freedom.

The issue today is the very survival of America and the free world. To assure this survival, I am willing to suffer any indignity, to go any distance, to do any labor, and to bear any cross. I am even willing to give my life, if that will ensure that the nation and world survive and do the will of God.

Senator HATCH. Well, thank you.

When you first came to this country, Reverend Moon, what were your first impressions concerning the latitude your church was given in spreading your particular religious viewpoint, and of course, seeking converts?

Did you generally feel free to do whatever you wanted to do with regard to your missionary efforts?

Reverend MOON [through interpreter]. Mr. Chairman, when I first came to America, in 1971, there was no organized persecution of our church and its members. We held spiritual revivals in all 50 States, and I was given many citations, and honorary citizenships by mayors and Governors throughout the Nation.

Later, however, things began to change. I attribute this to several factors. First, I am strongly opposed to God-denying communism, and the Communists themselves are actively working against me. In Korea and Japan, the Communists created a number of false, sensational tales about me and my movement. These include stories of brainwashing and sponsorship by the KCIA. When I began to become well-known in this country, the media, which for some reason is very critical of anti-communism, picked up these false stories and rehashed them again and again. By spreading these false rumors, a climate was created which has made the evangelical work of our church very difficult.

I have been under constant persecution. Even more disturbing to me is the fact that my followers have been scorned and mistreated. In spite of this, they have persevered through a great deal of difficulty. I respect them and love them very much. I believe that they will be regarded in the future as true heroes of America.

In any case, we are now gradually coming out of that dark era. More and more, the public is coming to realize that the Unification Church is here truly to serve America. The Unification Church is a patriotic organization which opposes any type of totalitarian system or God-denying ideology. Today, while facing possible imprisonment, I look to the future. I want to awaken and rally this Nation around the issue of religious freedom.

I want you to understand that the history of the Unification Church in this country has not been an easy one. It has been very difficult.

Senator HATCH. Reverend Moon, I understand how deeply you feel, and your strong feelings about the way your church has been treated, from your viewpoint and perspective by our Government, including the IRS, the prosecutors, and of course, the courts.

Do you also feel that you have been mistreated by the American people themselves, apart from governmental mistreatment?

Reverend MOON [through interpreter]. When I came to America, I certainly anticipated opposition, because I do not support the status quo, but am calling for changes based on a God-centered world view.

However, I do not blame the American people. I believe in the American people. I love the American people. An incredibly distorted image of me has been created in their minds as a result of the media and the government. Accurate information has not been given out to the people. Therefore, the American people themselves have been victimized. They have been denied the truth about the Unification movement.

On this occasion I would like to say, however, that you Mr. Chairman, are one great American who has understood and supported me.

Senator HATCH. Thank you, Reverend Moon.

I would like to ask you one more question, and I want you to know that I am fully aware of your ongoing litigation, and will understand if you prefer not to answer, until you have had time to consult with your lawyers.

But I would like to know, just for the record here today, were you or were you not the owner of the Chase Manhattan Bank funds and the stock that you were accused of owning in the Government's case against you? And if not, who did that money and stock belong to?

Reverend MOON [through interpreter]. Mr. Chairman, I would like to ask all the good people in this room a common sense question. If you want to conceal funds from the Government, would you bring them to the Chase Manhattan Bank and open an account in your name? I do not think so. If you really want to defraud the Government, or cheat the Government of taxes, you would rather go to Switzerland or the Cayman Islands and coneal the money in a secret account.

Why did the Government make such an implausible charge against me? The Government has been trying for a long time to find some grounds to accuse me. This was the only thing they could find, but it is absolutely not true.

The money and the stock in question belong to the Unification Church. In the early pioneering days of our movement in the United States, the church leaders asked me to permit my name to be used for the initial account of our international church movement. For them, my name is the embodiment of the church. I told them that if they wanted to do it that way, I would give them permission.

Later in 1976, when our church had established a foundation in this country, that account was transferred over to the official corporation known as the Unification Church International. In other words, the Chase Manhatten Bank account opened in my name was transferred in its entirety to the account of the Unification Church International. Those funds continue to be used for the sake of the world mission of the Church, precisely as the donors intended.

It is my understanding that what I have done is a common practice in this country. The leaders of mainline churches do this as a matter of routine. Furthermore, it is my understanding, and I hope I am not mistaken, that in the Catholic Church, it is even required to have certain property under the church leader's name, the so-called Corporation Sole.

This being the case, what I have done was absolutely normal and proper, but the Government could not find any other grounds for prosecution. It appears to me that they have used this charge as a pretense for exploiting my unpopularity in this country. That is what precisely happened, Mr. Chairman.

Senator HATCH. Thank you.

We are honored to have the ranking minority member of this committee with us today. Senator DeConcini, I will be happy to turn the time to you.

Senator DECONCINI. Mr. Chairman, thank you, and let me thank the chairman as usual for his willingness to extend the committee. I would also like to thank the Reverend Moon for testifying here on this very important subject matter.

I do have a few questions.

Reverend MOON [through interpreter]. There are a number of oring now in your church in the United States and in other countries? Do you have a number of followers or registered members.

Reverend Moon [through interpreter]. There are a number of organizations which I have inspired as part of the Unification Movement. The Unification Church, or Holy Spirit Association for the Unification of World Christianity, has a worldwide following of 2.5 million people. Because this number is continuously growing, we commonly cite it as a membership of three million.

At the same time, an organization which I created to fight against Communism on a worldwide basis has chapters in 120 nations and a following of over 20 million people. We expect this figure to go up to 70 million in the next couple of years.

Senator DECONCINI. How many members of the Unification Church do you have in the United States?

Reverend MOON [through interpreter]. Roughly, about 30,000 dedicated members.

Senator DECONCINI. And is that growing?

Reverend MOON [through interpreter]. Yes, each day.

Senator DECONCINI. And do your religious beliefs, Reverend Moon, subscribe that the State or the Government has the right to insist on taxes being levied against employees or ministers of the church as individuals?

Colonel PAK. Senator, would you repeat that question, please?

Senator DECONCINI. Yes. Do your religious beliefs, under the Unification Church, subscribe or believe that the State or the Government has the right to impose, or insist on levying taxes on the income of individuals who are employees or ministers, or part of the church?

Reverend MOON [through interpreter]. Our church members are obligated to pay taxes, including income taxes, to the local government and the Federal Government.

Senator DECONCINI. I am concerned, Reverend Moon, because I have on many occasions objected to some of the tactics of the IRS. On the other hand the Internal Revenue Service has been attributed with many convictions on tax cases from individual Americans who have escaped many other alleged offenses. I wonder if in your judgment or opinion, your feel that the Internal Revenue has sought to bring action against you for violating our income tax laws, because of any other actions, other than the religious affiliation of your church?

Reverend MOON [through interpreter]. As the other witnesses already testified, there has been an incredible encroachment by the IRS into every phase of human life in this country. In the case of the Unification Church, for some reason, we have been an extraordinary target.

We can only speculate as to why they are doing it, but they are doing it. For example, IRS agents came to our church and stationed themselves for several years in our church building. We provided them with office space while they scrutinized our church operations. This is highly unusual, and there are many other examples of unreasonable treatment of our Church by the United States Government through the agency of the IRS.

In my own tax situation, for example, in order to be certain that I adhered to the law, I employed a very prominent CPA, Price Waterhouse, as an advisor. I also had more than one lawyer advising me. I did not want to make any mistakes. Still the IRS came after me.

Senator DECONCINI. Did those firms recommend that the accounts be in your name?

Reverend MOON [through interpreter]. When I came to this country for the first time, I could not even understand one word of English. I was helpless. I was relying on professionals, the best professionals available in this country, and I followed their advice every step of the way. According to them, there was absolutely nothing improper in what I was doing.

Senator DECONCINI. Except in the face of the law now, and the conviction, appeal has been had. In fact, they turned out to be wrong, your advisors, is that not correct?

Reverend MOON [through interpreter]. The Government's action is improper and unjust, and this is the very reason the religious community is protesting.

In other words, if this can be done to me, then no one in this country is safe. You just give me your tax return, they have a way to prosecute you tomorrow.

[Pause.]

Senator DECONCINI. I appreciate, Reverend Moon, the great amount of authority and power that the Internal Revenue Service has, but I also appreciate the American system of justice, where we are tried by our peers, by jurors, and you had such a trial, did you not? And is there not a distinction between a jury trial and the IRS?

Were you not protected by the fact that you had your day in court, with ample opportunity to refute the charges, to be heard by a jury of peers, of American citizens, and yet they came to the conclusion that indeed there was a violation of the law?

It seems to me that there are two different problems here. One, that maybe the Internal Revenue picking on you because they dislike you, which is unfair, and should not happen. And yet the other is the criminal justice system that tries people, in a manner that I think is probably the most impartial way of any country, of which I know I do not know of a better way, and it seems like we ought to distinguish the two issues, and focus perhaps only on the Internal Revenue Service, and not on the criminal justice system. They must be distinguished because if you say that you have been persecuted by the criminal justice system, you have been persecuted by the American people, and you have testified that you do not feel that way rather that it is the Government that has done something wrong to you.

Reverend MOON [through interpreter]. Mr. Senator, I do still have respect for the American judicial system, but I have great misgivings about the deeds of the Government, not only the IRS, but also the Justice Department, the prosecution, and others.

For example, if I understand correctly, although I am sure that Constitutional scholars can answer you much better than I, the jury system in this country is organized for the added protection of the defendant.

In my case, I did not want a jury trial. I claimed this as a constitutional right. I did not want that trial. I wanted to be judged strictly by the law, as interpreted by a good judge. I spoke out and the Government punished me by forcing a jury trial upon me. What king of justice is that? Instead of protecting me, they used the Constitution against me.

Senator DECONCINI. Are you saying that a trial by one single person, a judge, is a more fair trial than a trail by a jury of impartial citizens? [Laughter.]

Reverend MOON [through interpreter]. Not in every case, Mr. Senator, but in my case. The Government knew that they could only convict me by exploiting my unpopularity before a jury. During the trial, they introduced a great deal of disinformation about my ministry. Then they appealed to the jury for a verdict of guilty. Do you think that a jury of citizens is always impartial? Jesus Christ got a jury trial, and he got the verdict. [Applause.]

Senator DECONCINI. Well, Mr. Moon——

Reverend MOON [through interpreter]. This is the reason I wanted to be tried by a judge.

Senator DECONCINI. Mr. Moon——

Senator HATCH. If we could, Senator DeConcini——

Senator DECONCINI. You may make any questions you want between your leadership and Jesus Christ, but I take offense to that. We are not here comparing religions. We are here trying to find out something about this system.

Senator HATCH. Let me interrupt for a second, Senator DeConcini.

Now, I would I like no further disturbances, and no further emotion.

Senator **DeConcini**. I thank the chairman.

Senator **Hatch**. The Senator is asking some very good questions.

Senator **DeConcini**. Mr. Chairman, I am not here to antagonize Reverend Moon nor his followers nor this audience, but I think it is disgraceful for that attitude to permeate in this so-called freedom of religion discussion we are having here this morning, and I thank the chairman for bringing it to order.

My point is this, I have read about this case, and I have some very deep qualms about the Internal Revenue Service, as I have had for many years, I realize that the Government is run by people, and that people have certain basis, but I find a contradiction here, Reverend Moon, in that you indicate that our jury system that is provided by the Constitution is not acceptable to you.

I suspect had that jury system found you not guilty, you would find it very acceptable. It seems to me that if your complaint here, is that someone has picked on you, and done something that they should not, it ought to be an inquiry into the Justice Department and Internal Revenue Service, and not casting blame upon the jury that tried you unless you have some proof that the jury was tampered with, or that there was some violation of the law on the part of the prosecutor or the investigator as they related to individual jurors.

I have not yet heard that view, nor have I seen that reported, in all the coverage of your trial. I think it is important that we inquire whether or not you are calling into question the fair jury trial in your case, or our criminal justice system.

Reverend **Moon** [through interpreter]. May I say this to you, sir, that prior to the jury trial, we had an objective professional company conduct a survey of public opinion with regard to Reverend Moon's case. It turned out that 60 percent of the people who participated in the survey said that they would convict Reverend Moon regardless. I ask you, Mr. Senator, under those circumstances, if you were in my position, would you like to have a jury trial?

Senator **DeConcini**. My answer to that is, I would ask for a different forum, and a different place to have the trial, maybe that was petitioned by your attorneys, I do not know.

Reverend **Moon** [through interpreter]. I want you to understand that the media has really done a thorough job. There is no place where I could have a fair trial.

Senator **DeConcini**. If that is the case, then I take it that you set yourself apart from all other citizens, based on the publicity and the media presentation of your church and your problem, and that therefore it was impossible to have a fair trial in the United States of America, is that a fair statement?

Reverend **Moon** [through interpreter]. That is why I requested to be tried by a judge. As I said, I believe in the judicial system of this country. I thought I could have a fair trial by a judge.

When I was indicted, I was in Korea. I returned to this country to face trial even though Korea and the United States had no extradition treaty. Because I am innocent. I wanted to stand trial. Of course, I wanted to get a fair trial. I wanted to be vindicated. That was what I desired.

It is not only my case which is at stake here. There are many people like me. Look at the history of this country. There are many others, many ethnic groups, many foreigners, many oppressed Americans, who have been condemned and shall be condemned like me in the future. In this way, Government will continue to abuse innocent people. I feel that a movement must be created to stop these injustices once and for all.

[Applause.]

Senator DECONCINI. Mr. Chairman, I will cease, and I thank the chairman for his courtesy.

I can only say that having been a prosecutor, and literally prosecuted dozens of defendants, never once did I have one where the jury returned the verdict and the defendant said that yes, I am guilty. I think that is most inherent in human nature, to want to defend yourself, and I admire you, Reverend Moon, for defending yourself. That is part of our system, and you have every right to do that, and to continue to claim your innocence, regardless of any change in the appeal system.

But I also have to say for the record that I think there is a contradiction here, that you cannot have it both ways. You cannot have the freedoms of America, when the jury trial turns out the way you want it, and condemn the whole system when it turns out in a way that does not favor you.

It seems to me your grievance here is more with the Internal Revenue Service. It is a problem with which I am very sympathetic as many of my constituents have had problems with the Internal Revenue Service. That is where the complaint should lie, not with our criminal justice system, and not with a trial by jury. Notwithstanding your conviction, the little bit I know about it, it seems that you had a fair trial. Unfortunately, it did not turn out that way in your beliefs, and in the beliefs of your followers. There may be a problem with the underlying investigation and the prosecution that brought you to the trial, and that to me is worthwhile delving into.

Thank you, Mr. Chairman.

Senator HATCH. Well, if I could add something to it, I used to defend some of these cases in Federal court, and I cannot ever recall a case where, when the defendant, in his best interest, for his own protection, asked for a nonjury trial, where the prosecutor came in and demanded a jury trial.

Now, I am sure that there are——

[Applause.]

Senator HATCH. Now, I am sure there are instances, and the prosecution apparently has the right to do it, but that is one of the Constitutional issues that was raised in this case, rightly or wrongly was, and I think rightly, was whether or not the defendant has the right to make that determination, and I think it is a case of first impression, which basically has been denied by the lower courts, and certiorari has been denied by the Supreme Court, but it has not resolved that question.

My concern with your case, Reverend Moon, my concerns, I should say, of course, are based on the U.S. Constitution, specifically the first amendment.

Now, I believe, among other things, that the trial judge should have cautioned, and instructed the jury to not, under any circumstances, substitute its lay views, of the jury members, for the good faith position taken by your own church. I think that was a mistake. I think it was wrong, I think it was a legal error. I think it was constitutional error.

In fact, the judge specifically instructed the jurors to disregard religion entirely in this matter, and I am sure he did that, in my reading of the sterile record, I believe that he did that, because he was worried about this backlash and this problem that Reverend Moon has with a large minority of the people in America at the particular time, and perhaps the prejudices that existed at the time. So he probably did that for the best of purposes, but in this particular case, whether you were entitled to hold these funds in trust, or these properties in trust, was a major issue, and in this particular case you cannot divorce that from the consideration of religion, and I cannot blame you for not wanting a jury trial when the polls were showing that most people in this country were somewhat prejudiced against you.

I do not know that I can blame the prosecutor for demanding a jury trial, knowing that fact, but I think it is a significant constitutional issue whether the defendant in a country where the defendant's rights are always held paramount over the rights of the prosecution, that his rights should be solicitously guarded, that he should not have the right to have a trial before a newly nominated, and confirmed and sitting Federal judge.

So those are important issues, and I did not interpret, Senator DeConcini, Reverend Moon's comments to mean that he does not trust the jury system in this country. I think he does. I think what he was concerned about is could he get a fair trial with the attitude that was permeating our media, rightly or wrongly, and our country, with regard to his own church. And I think his point is a good point, coming from a minority religion, which is now the fifth largest in the United States of America, but in its day it was a distinct minority religion.

I know that some of our church leaders did not have a very good opportunity for a fair trial, and would not have had under those circumstances. So I do not think—I hope you are not criticizing the criminal justice system of the country, or the jury system, in which both Senator DeConcini and I have profound beliefs.

But I do think that this is a unique situation that really deserves some constitutional consideration.

Yes.

Reverend MOON [through interpreter]. Mr. Chairman, Reverend Moon asked me to thank you for your comment, also, Senator DeConcini, thank you for your care and concern, and we both thank you.

Senator HATCH. I want to thank both of you for being here. I think it has taken a great deal of courage for you to appear at this particular hearing.

Your statement was articulate and eloquent, from your perspective. I cannot tell you what will happen in your case. It appears that most things that can happen, have happened. But I will say that I am deeply concerned about some of the constitutional ramifications of your case, and I am even more deeply concerned that many people in our country feel so incredibly upset about certain agencies of our country, and I wish that we could have all of our agencies operate in such a reasonable and fair way that all of us would feel good about them.

But I want you to know you have this committee's respect for appearing here today. I think you have added a great deal to this hearing. Whether people agree with you or disagree with you, you have exercised your rights to testify in public in the freest of all lands, and that we have to have respect for.

So I want to thank you for taking time to be with us.

Thank you, Colonel Pak, as well.

Reverend MOON [through interpreter]. Mr. Chairman, could I have one small request to make as a conclusion?

Senator HATCH. Surely.

Reverend MOON [through interpreter]. To you, Mr. Chairman, with the help of your committee members, such as Senator DeConcini, that small request is, that I understand the Department of Justice prepared a so-called prosecution memorandum on my case. The prosecution memo prepared by the Criminal Tax Division of the Justice Department recommended that the U.S. Government should not indict Reverend Moon, because their professional opinion was that there was no criminal case there. This was the unanimous opinion of three lower echelons of the Justice Department, if I understand correctly.

In an unusual move, these three levels of attorneys were ordered to do the second review. They reviewed a second time, and still recommended against prosecution. Their recommendation then went up to a high-level, political appointee, with no criminal tax experience, who reversed all the recommendations of his own people, and authorized prosecution by the U.S. attorney in New York, without giving any good reason.

Mr. Chairman, and Senator DeConcini, I am sure the American public, and the religious community would like to know the truth here, and the American media want to know the truth, I am sure.

Could you kindly use your good offices to request the Department of Justice to produce a copy of that memorandum? This would lend credibility to the claim of the religious community that the Federal Government is violating the first amendment, separation of church and State. Furthermore, exposure of this document will show to the world that my prosecution was politically motivated, and there was a conspiracy by certain Government officials to get Reverend Moon.

The world wants to know the truth. And furthermore, I would like to say, Mr. Chairman, in addition to the speech that I gave today, and the prepared text of the speech I would like to request that the Congressional Record be kept open for 30 days, so that I might introduce a longer statement for the record.

Mr. Chairman, I salute you once again for your courage and righteousness in standing up for religious freedom.

Thank you very much. God bless you.

Senator HATCH. Thank you.

We will keep the record open for that period of time, and we would also solicit comments from other religious leaders, as well, concerning their particular concerns and support for religious freedom in America.

We, by necessity, could only have so many witnesses here today, and we may have to hold additional hearings on this subject, which seems to have a great deal of interest, and certainly should have a great deal of interest.

But, again, sir, we are grateful that you have taken time to be with us today, and we appreciate receiving your statement and testimony here today.

Thank you so much.

Reverend **Moon**. Thank you for your kindness. God bless America.

Colonel **Pak**. Thank you, Mr. Chairman.

Thank you. [Applause.]

Senator **Hatch**. We were going to call at this time Dr. Bob Jones, Jr., the chancellor of Bob Jones University from Greenville, but this morning he called and said he could not be here. So we will skip over him.

Senator **Hatch**. I would like now to ask Mr. Tribe and Mr. Ball to reassume their places at the table to discuss again, from the standpoint of the first amendment, some of the issues, viewpoints, and suggestions brought out in the testimony by these past several witnesses.

While they are taking their places, I might mention that following, Mr. Ball and Mr. Tribe we will receive testimony from several other emminent religious leaders, scholars, and participants in the administration of churches, who may also wish to comment on some of the testimony we have received from several of our past witnesses.

Let us turn the time over to you gentlemen today and why do we not start again with you, Mr. Tribe, and then we will go to Mr. Ball.

Mr. **Tribe**. Thank you, Mr. Chairman.

If you would like me to make a couple of statements in reaction to what we heard, I would be glad to, or if you have particular questions, I will be glad to try to answer them.

Senator **Hatch**. Well, we would love to have some of your statements, if you could keep them to a minimum, I would appreciate it, but then I would have some questions for you.

Mr. **Tribe**. I would be glad to.

Let me first say a word or two about Senator DeConcini's concern about the criminal justice system and the fairness of the jury.

I am sorry that he had to leave, but I am sure he will have an opportunity to look at the transcript of these remarks.

I think the premise of his remarks was that the jury is always the fairest mode of trial. Yet the premise of the American legal system—at least since 1930, when the U.S. Supreme Court, in *United States* v. *Patten*, held that a jury is not mandatory where it has been waived—the premise of our legal system is really very much to the contrary. The premise of our system is that the defendant has a right to a jury of his peers, and ordinarily that is fairer. But in extraordinary cases, in cases of extreme bias, or blindness, it has long been the assumption of the system an accused may have a right to waive a jury, and to submit his case to an unbiased life-tenured Federal judge, who does not have to risk the wrath of friends and neighbors. Thus, in 1965, in the case of the *United States* v. *Singer,* the Supreme Court left open a very profound question: namely, whether there are not some circumstances of defendants whose individual character or cause is so controversial and so unpopular that they should have a right to be tried by a judge.

Now, in my view, Reverend Moon's was such a case. In fact, the trial judge himself in that case made a rather important statement. He said he thought, after hearing the prospective jurors, that it would be fairer—to answer Senator DeConcini's precise question—fairer for this case, involving as it does sensitive and symbolically difficult issues of religious freedom, to be tried without a jury. And yet he felt he was powerless, in light of the prosecution's insistence that a jury be used, to act on that belief.

Equally remarkable, the prosecutor in the *Moon* case gave as her reason for insisting upon a jury the observation that Reverend Moon had the audacity, as he has here today before this committee, to speak to the world in front of the Federal courthouse, his belief that his was a religious persecution.

Senator HATCH. He ought to have had the right to speak in front of a Federal——

Mr. TRIBE. I would have thought the first amendment—I would have thought the first amendment, Mr. Chairman, would have given him that right, and yet that was the reason the Government gave for insisting on a jury. They said, ah ha, you question the fairness of our system, we will show you what is fair, we will give you a jury.

Now, in my view, it is still an unsettled constitutional question in this country whether that is consistent with fairness, or consistent with free speech.

The American Civil Liberties Union, the Southern Christian Leadership Conference, and the National Emergency Committee for Civil Liberties were among those who filed friend of the court briefs on this particular issue.

So to Senator DeConcini, I would simply want to say that one can simultaneously believe deeply, as I do, in the jury system, and yet believe that, when the jury is turned from a shield for the accused into a sword of inquisition, that is not the America I know.

Let me only add one other observation with respect to whether all this is a conspiracy, or whether it represents simply the ignorant disregard of people's rights. I think that Reverend Moon's request to see the Government papers in this case, which could well support his belief that this was persecution, is a request that I trust the committee will take seriously.

Senator HATCH. Well, on that point, that is a good request.

My experience is that the Justice Department does not cooperate readily in those types of requests, but I think we will make the request, and I would hope that this is one case where the Justice Department will cooperate, because this is a religious freedom issue, and I am very concerned about this.

I am very concerned about whether there is—whether this case was motivated sheerly out of prejudice, or out of a desire to—out of an improper desire, in any way, shape, or form.

I also believe that the point that was made by Reverend Moon, through his interpreter, that if that is true, that there was such a memorandum, that that would go a long way to showing perhaps the depth of religious intolerance that we may have in our society today.

So I will make that personal request, and in the interest of this hearing, and in the interest of future unpopular religious leaders in America.

Mr. TRIBE. Thank you, Mr. Chairman.

I was going to say that even if——

Senator HATCH. I might also just say that Martin Luther was very unpopular in his time, and so was Wingley, and Calvin, and Knox, and so many others.

Mr. TRIBE. I think it is the history of religious movements often to be unpopular in their time. It is the history of Government often to be intolerant. It is also, as I think you rightly point out, not the first thing the Government wants to do, to expose the most dramatic evidence of its intolerance, and I was going to say that even if such a memorandum is not produced, that the ultimate issue here is not who was the demon. It is not really whether there is a conspiratorial mentality in Government.

I think the ultimate issue is disregard, disregard for fundamental constitutional and religious precepts. I think it was Justice Brandeis who once said that the greatest threats to freedom come from encroachments by the well meaning, by men of zeal who act without understanding.

So even if we are wholly generous about the motives of this administration and its predecessors, I think that the record that this committee is beginning to build is a record which suggests that the real villian of the piece, whatever the motives of Government might have been, the real villain is systematic disregard of fundamental precepts of religious freedom.

What one hears in all of these cases is an attempt to compartmentalize. The people in Nebraska are told by State officials this is not a religious issue, it is an educational issue.

People like Reverend Moon and other victims of Internal Revenue oversight are told this is not a religious issue, it is a tax issue.

It seems to me, Mr. Chairman, that we can very well pigeonhole religious freedom to death, if every time religion becomes relevant in one or another sphere of our social life, it is possible for men of zeal, without understanding, simply to dismiss the relevance of religion, as though religion had a place only at the top of some very remote spiritual tower, and were not relevant to the ordinary concerns of everyday life.

And if any lesson emerges form what I have heard here today, from Dr. Dixon, from Pastor Sileven, from Reverend Bergstrom, and from Reverend Moon, it is that, even with the best of intentions, intentions that frankly I doubt the Government had here, but even with the best of intentions, it is possible, unless we remember the demands of religious freedom, that the price we will pay is the sacrifice of religious liberty.

I would be happy to answer any more particular questions you might have.

Senator HATCH. Thank you.

Mr. Ball, if you would care to make some comments, we would appreciate it.

Mr. BELL. Yes, I have four, and I will be brief about them, Mr. Chairman.

First, I begin with the very point that Professor Tribe has made: The idea of excluding religious considerations from the deliberations of the jury.

This echoes some things that are extremely unpleasant that have surfaced in some other cases.

When the National Labor Relations Board attempted, some years ago, to impose its jurisdiction upon religious schools, the claim was made by the NLRB that the schools were "only partly religious," although the Supreme Court of the United States had already said that schools of that kind were an integral part of the religious mission of the church. They were a ministry, they were the church itself, but constantly in religious liberty cases you find an effort made, especially by Government attorneys, to so limit the definition of religion that the whole religious issue becomes irrelevant, if not inadmissible.

I heard a judge only recently ask what tenet of a religion was intruded upon by certain governmental actions which were going after the whole religious community. The judge, in other words, was mistakenly, and ignorantly, looking for some black-letter doctrine out of a confession of faith, and asking whether the Government was trying to contradict that. That is not an unusual situation in religious liberty cases.

The Amish, for example, had no particular tenet that was being offended by the effort of the government in Wisconsin to put down its religious practice.

Second, I think we need to keep in mind the statement that I heard earlier in testimony today, that ministers, like everyone else, can be jailed for breaking the law.

Well, fine. That is a superficial comment, however, in light of what we have heard today from Pastor Sileven. It all depends on what law, and it depends on the sufficiency of the trial by which that breach of the law was determined.

Here in Nebraska you had a situation which involved two basic laws, that you would have to get a license to operate the religious ministry, known as a Christian school, a permit from the State, in order to exist. This licensing of religious ministries flies directly in the face of the first amendment, to license a religious ministry.

But second, is the fact that it was the obligation of the government, as I mentioned in my earlier testimony, to prove a compelling State interest in its licensing law.

In fact, only nine States in the United States require licensing of nonpublic schools, and some of those license laws are relatively mild, but the fact that 41 other States do not require it is almost conclusive proof that there is no compelling State interest, no need, no public need to protect children through the licensing of schools, and so it is with teacher certification.

As to teacher certification, expert testimony, had it been introduced in that case, would have shown that teacher certification is nonsensical in terms of assuring good education.

States in these matters, and in many other matters, in the field of welfare, are constantly trying to say, "We have the recipe, and you must follow that, because we know best." Instead of saying, "Let us look at the proof in the pudding, let us see what is coming out." The Christian schools, for example, have been able to show, in case after case, that they are performing admirably. The proof is in the pudding, not in the recipe.

Third, just a quick remark about the Supreme Court of the United States, which has been very much involved in the discussion today. This is an institution which is entitled to enormous respect. What I have to say now in no way detracts in my mind from that respect. But it is a fallible institution.

The Supreme Court has overruled itself at least 100 times in its past history, and that is an acknowledgement, and a candid one, by the court, that it is not always infallible.

We have, however, in many cases, I fear, or at least in some cases, the possibility that what the media represents the case to be, may exert subtle pressure on the court in its decisionmaking.

In the *Jones* case we had the remarkable fact that the Government of the United States went before the Supreme Court, on January 8, 1982, to say we do not have a case. Here was the end of the case, obviously. It was *Bob Jones University* v. *United States* The United States said it did not have a case. This caused a fire storm in the media. And whereas there should have been a prompt judgment in favor of the university, the case hung over the entire winter, as the media raged on and on, as is their right. Yet we finally find that there was no judgment rendered until after special counsel had been appointed and argument had taken place.

Finally, I think everyone thinking about the problems that have been talked about here today ought to give some thought to the cost of litigation, and the frequent inequality of parties before the courts. How difficult it is to think of a Pastor Gelsthorpe, or Amish people, and other people, and churches, set upon by Government, having to defend themselves in court, and then having to use precious stewardship funds—money which was given solely for the religious purposes of the church, and which normally is used faithfully to those purposes—in order litigate, sometimes over years, against the Government, which is normally heavily staffed legally, and can afford endless discovery procedures, every elegance of practice.

I think the costs of litigation—to which the Chief Justice of the United States has referred so often, and about which the president of Harvard recently made a very moving speech about—ought to be taken into consideration, that public opinion ought to weigh heavily upon Government, not to continually reach for the gun where little people are involved/ and in particular where religious groups are involved.

Senator **Hatch**. Thank you.

Let me first ask each of you, if you will, to comment generally on the present climate of the Constitution's guarantee of religious freedom.

In light of the testimony that we have just listened to, are there any discernible trends, in your viewpoints? Are we seeing progress toward greater protection of our religious rights and freedom, or are we seeing a retrogression with regard to those rights? Are they slipping away from us?

Mr. Tribe.

Mr. **Tribe**. Mr. Chairman, I am afraid that I perecive more retrogession than progress. I certainly do not go as far as Dr. Dixon, who said, in perhaps a rhetorical excess that he did not fully mean, that the first amendment is now dead in America.

The first amendment is not at all dead. One need only travel around the world to see how very much more alive it is here than its counterparts are anywhere else. So I would agree with you, Mr. Chairman, that the first amendment is alive, if not well, and that the hearings of this subcommittee are eloquent testimony to that.

But I have to say that the first amendment is ailing. It seems to me that it is ailing in many of its components, not least important among which is religious freedom. It seems to me that there are several discernible and dangerous trends in America today which coverage to create, if not a crisis, at least a circumstance of great urgency, which I think this committee should be commended for addressing.

One of those movements, I am afraid, is a movement toward greater orthodoxy and intolerance—toward the belief of many that they, and they alone, have a direct path to the Divine, that those who disagree with them must surely be instruments of Satan.

Religious people are as capable of being intolerant as the irreligious, but the ultimate burden of intolerance in this country is to suffocate the life of the spirit. Whether that intolerance is found in the halls of the Internal Revenue bureaucracy, or in the pulpit of a church, it seems to me that the ultimate consequence of intolerance is an increasingly narrow definition of what counts as genuinely religious.

In Reverend Moon's case, with which I am obviously quite familiar, it was astonishing to me that the U.S. Court of Appeals for the Second Circuit, could say, in a split decision, that the jury was not bound to accept the Unification faith's definition of what constitutes a religious purpose.

Now, if that is not an overt invitation to intolerance, what else is it? If each religion is not able to define for itself, within the boundaries of rules forbidding harm to others, what its religious mission is, then are we not truly seeing evidence of intolerance brought home?

So one trend that I see abroad in the land, and manifested in judical decisions such as this one, is a trend toward intolerance.

A second is a trend to which I referred briefly at the opening of these second remarks, and that is a trend toward pigeonholing and compartmentalization—this is a tax issue, that is an education issue, let us keep religion in its place.

The Framers did not have a small room reserved somewhere at the top of a remote tower for religion. It was their assumption that religion would pervade life. The separation of church and state never meant what a number of bureaucrats and judges are construing it to mean today, that religion has to be kept hidden in a closet, rather than brought forth to the world.

Rather, the separation of church and state meant that the church should not be equipped with the power of sword and purse, and that Government should not trample upon religious prerogatives. I think we are forgetting that lesson when Government mudertakes to license preachers and to license religious ministries.

A third trend that I perceive in this country is a trend that really assumes the homogeneity and the autonomy and the autocracy of the State. It is as though everything belongs to the Government, and as though, when the Government is willing somehow to grant a favor, to grant a subsidy, to grant an exemption, it does so at its own largess, and in its own discretion.

It is from that view that there emerges the pernicious philosophy that government can impose conditions on its benefits, and that those conditions, even if they work in the long run to suffocate religious freedom, are of no great concern. It is that view that in turn leads to the philosophy that says we can tie whatever strings we want to tax benefits, tax exemptions, to other benefits given by the State: If you want the privilege of running a school in this State, then you have got to toe our line.

It seems to me that that is a dangerous doctrine, and without expressing any view at all on cases like the *Bob Jones* case—where we had a clash of fundamental conflicting rights, rights against racial discrimination, as well as rights to religious freedom—I want to say that a dangerous trend I perceive abroad in the land, and evident in the testimony, is a trend to say, "As long as the Government is not using the most obvious and the most overt tools and weapons of oppression, as long as it is at all subtle in its persecution, as long as we cannot quite prove that the Government has deliberately set out to suppress a particular religious belief, then all is well."

I think, in an era when Government plays an increasingly pervasive role, we need a correspondingly capacious and subtle view of the forms in which government can oppress human freedom and human liberty.

This is not to say that men and women of the cloth, ministers, rabbis, priests, prophets, should be immune from the law, or above the law. No one seriously makes that claim.

It is to say that, in accommodating the claims of law with the claims of conscience, we can never afford simply to stuff conscience and religious back into the closet when they are otherwise relevant. And when we do see persons of deep religious conviction—whether ministers in Nebraska, with little resources, or whether powerful religious leaders—being herded off to prison, for the first time in our recent history, for little discernible reason other than that they have pursued the tenents of their faith, then I think we have to take these trends seriously, and ask ourselves whether we are not forgetting the lessons that gave this country its great constitutional worth.

Senator HATCH. Thank you.

Mr. Ball.

Mr. BALL. Yes. Yes; I would have to agree with Professor Tribe that there are trends in the country today which militate against religious liberty, and they are quite evident.

One of these obviously is in the field of taxation, and related to that, by the way is the likelihood now that religious exercise is going to be taxed under the Social Security law, an area that needs a great deal of careful examination, and one which has not been examined sufficiently.

Another thing, of course, relates to a combination of attitudes on the part of the public. Some members of the public are misinformed about dangers to religious liberty, and this possibly accounts for the fact that you have had the rather amazing situation that there has been no national outcry of great substance on the part of millions of people over what has been occurring in Nebraska.

The question of the growth of State power, of governmental power, of course, is an enormous question, and as government grows in all areas, we certainly need what Professor Trible refers to as countermeasures. We need policies that will, in such legislation, protect religion. We have very weak exemptions often, where an exemption is truly needed.

I believe that the school question is the most sensitive of all the religious liberty questions in the country. We are here very much dominated in some of our States by the essential thinking that Bismarck employed in Germany during the Kulturkampf, the spirit of the French laic laws, which I see are now being very much revived in the effort of the French Government to grab the Catholic schools.

Finally, I think we ought to have a new look at the situation of religious liberty in public education. I think that the three main cases of McCullom, Engle and Schempp, need reexamination, in light, not of establishment clause considerations, but in light of the fact that there are millions of children in public school today, who in the most active part of their day, and the predominant part of year, have no means of religious accommodation.

Finally, Professor Tribe spoke of the growth of intolerance, both on the part of government and on the part of religious groups, and he mentioned the fact that we ought to be opposed to intolerance, whether it is on the part of IRS, or in the pulpit.

But here I would respectfully suggest, Larry, that there is a major difference which I know you recognize. Intolerance in the pulpit is not governmental intolerance, and oftentimes people in the pulpit do express, very strongly views on social issues. Yet these are certainly completely constitutionally protected. Intolerance by government is another problem, indeed.

Thank you, Mr. Chairman.

Senator **Hatch**. Thank you.

Let me just ask you both one other question, and then I would like to submit a series of questions in writing to you.

I would like to ask each of you, as lawyers, to comment on the situation in Nebraska. I happen to love Nebraska, I think it is a great State, and I feel quite deeply about it, but do you disagree with the decision of the Nebraska Supreme Court, and if so, why?

Mr. Tribe.

Mr. **Tribe**. I think perhaps Bill Ball should begin his answer to that question, because he has been more intimately involved with the case, and I would be glad to talk next.

Senator **Hatch**. Mr. Ball.

Mr. **Ball**. I do not know how far I should go in commenting because I will be arguing before the State Supreme Court in Nebraska on July 2, but what I have to say, I guess, is already much in the public record out there, and we are not involved in a jury case, with a criminal trial at this point.

I had mentioned before that you have two basic Nebraska laws, the licensing of teachers and the licensing of schools, which have been resisted by Christian pastors in the State.

The State's obligation was to prove that it had a compelling State interest in imposing these laws on religious ministries, and the schools had the obligation of proving that they were indeed religious ministries, and I think the church carried its burden. The State did not carry its burden, but a great weakness in the case was that no real expert testimony was introduced on the subject of education, I mean real expert testimony.

Also, there was a failure to raise certain basic constitutional issues.

Now, that being the case, the Supreme Court of Nebraska took the case as it found it, judged on the record it had before it, and judged adversely to the church. This case was then appealed to the Supreme Court of the United States, not certiorari but appeal, and the Court summarily affirmed, meaning it is the law of the land, even though the strongest inference is not derived from a case that is not made after full briefing and oral argument.

Nevertheless, it was an affirmation, and not a mere denial of certiorari. That left the situation in Nebraska where the county judge, down at the bottom of the judicial heap, felt forced to hold in contempt any pastor who was violating what was now declared to be the law of the State.

This whole misfortune in which the case was born has now continued in prosecution. There have been violent breaches of due process of law in the enforcement proceedings, and as yet there has not been the chance that ought to have been afforded long since for a proper trial of the issues so that there could be testimony which would prove beyond a shadow of a doubt that the teacher certification and licensing schemes do not assure anything in the way of an educational quality. But all of that is part of the tragedy of Nebraska.

And I realize that today the State has enacted some new statutes. These will possibly render the case in which we are involved moot, or it may not. Beyond that, I cannot comment, except that I think it is the most grievous open sore relating to religious liberty in the country.

Mr. TRIBE. Mr. Chairman, I have three different remarks about the case.

First, with respect to the contempt power, it raises technical and important issues entirely separate from religious freedom, on which I do not think I have any useful addition to make.

Second, the case raises, outside its four corners, a profound issue not only of the relationship between church and state, but also of the relationship between family and Government.

In the 1920's, the U.S. Supreme Court established, in the landmark cases of *Pierce* v. *Society of Sisters,* and *Hill Military Academy* and *Meyer* v. *Nebraska,* that it is not the proper role of the State to standardize the human psyche into a single mold—that it is not the proper role of the State to insist that all children be educated in lockstep, as the State would conceive the ideal citizen; that, so long as minimal protections against abuse and utter illiteracy are preserved, it is the prerogrative of the family to provide educational options for its children.

Now, although it is regrettable that only the more affluent families in this country have been able, in many cases, to take advantage of that right, it is a precious right, and it is one that would be trivialized if the State's control over alternative educational institutions, whether religious or secular, were to become so total that they are simply clones, and copies of public schools.

So it seems to me important to understand the Nebraska case in its broader context—the broader context being that of imposing limits upon Government authority. It was said to be part of the mandate of the current administration to take Government off people's backs, and whatever the validity and wisdom of that mandate in the economic sphere, surely the sphere in which it has the greatest validity is in the sphere of initimate, private, human relations, and in the family.

That is why I answered Senator Leahy earlier that, although the shield of family and privacy should not prevent the State from extending a protective arm in cases of demonstrable child abuse, nonetheless there really has to be a showing of abuse. And I would say, similary, that if the State is to interfere in the decisions of communities, families and churches, as to how best to bring their children up in this complicated world, it had better have a good reason, a reason other than simply its insistence on preserving its prerogratives in the licensing process.

The third point that I wanted to make is that, although there are ominous trends in the land, these cases involving both education and taxation have created extraordinary and unexpected unities of prupose, which I think bode well for the future.

It was said long ago, by Chief Justice John Marshall, that the power to tax is the power to destroy.

We have often learned, I think to our regret, that the power to educate may also be the power to destroy. And I put the word educate in quotes.

I think the power to destroy, when wielded by an intolerant Government, generates alliances that are wholly unexpected.

In the case of *United States* v. *Moon,* for example, there were amicus briefs from distinguished public officials, not ordinarily on the same side of many issues—yourself, the National Conference of Black Mayors, Senator Eugene McCarthy, Claire Booth Luce. There were groups involved in that case who have rarely seen eye to eye on anything: The Freemen's Institute, the American Civil Liberties Union, the Marxist League, the Catholic League for Religious and Civil Liberties, the National Council of Churches, the National Evangelical Association, the Southern Christian Leadership Conference. There were churches who disagree on much else, who were agreeing that there is a common national problem: The Presbyterians, the Mormons, the unregistered churches, the Baptists, the AME Zionist Church, and others. It seems to me it is cause for hope when government intolerance, and government oppression, and even government stupidity, create such powerful, and, I believe, enduring alliances of purpose. I think that this committee is serving an important mission in bringing to light what many of us who disagree on so much else, have in common in this important cause.

Senator HATCH. Well, thank you.

Let me ask you one other question. I raised the—just two of the issues in the *Reverend Moon* case. The one that you so eloquently raised in your brief.

But the other one was the failure by the court to properly instruct the jury, and in fact, instructing the jury not to give any consideration to religion.

Do you have any comments about that?

Mr. TRIBE. Mr. Chairman, I fully agree that that was error. I believe that had the court——

Senator HATCH. I think it was egregious error.

Mr. TRIBE. I think it was egregious, I think it was horrendous. Obviously, the U.S. Supreme Court will not tell us what it thinks; but history might.

The *Korematsu* case, which was decided in an outrageous and egregiously wrong way in the 1940's, was finally corrected, decades later, by the Federal District Court in the Northern District of California.

It seems to me that the books of history close very slowly on cases of great moment, and I think it is important that the last word on matters of this kind not be written until a great deal more is known.

Certainly in the case of the jury instructions, we have an egregious situation here, in which the U.S. Court of Appeals was itself divided, two to one, on the propriety of those instructions, and I think I might simply point out that if Reverend Moon should go to jail, he will be not only the first religious leader sent to prison largely because of the tenets of his faith, and the way it chose to organize its affairs; he will also be the first person in this country, in at least a quarter of a century, to be sent to jail for an alleged tax violation, where the appellate judges could not even agree among themselves as to the tax standards applicable.

I think I say nothing terribly surprising, for all of us who have to grapple with the tax system, when I observe that it is complicated enough without the threat that if some people think you violated the law, and others do not, and they are all Federal judges sitting with life tenure, you might nonetheless end up in a U.S. penitentiary. That is all the worse when the guesswork to which you are put is thrust upon you in a context as fragile and as vital as the exercise of first amendment freedoms—involving how to organize a religious community.

And it seems to me, therefore, that the problem that you raise about the instructions in this case is a problem that will not go away simply because the Supreme Court has declined to hear argument in the case.

Senator HATCH. Well, we not only have a jury trial imposed upon the defendant against his will, feeling that he probably cannot get a fair jury trial, but imposed for what really are frivolous reasons, or should I say a frivolous reason.

And then on top of that, we have a judge directing the jury itself to not give any consideration to religious reasons.

Mr. **Tribe**. It does not seem like the image of fairness, does it?

Senator **Hatch**. Well, it certainly does not to me. I mean, I can disagree with Reverend Moon, and I can disagree with some of the tenets of his religion, and I can find fault, perhaps, but I do not care who it is, I do not care if it is the most unseemly, or despised person in our society, in this society, we should all be in the forefront of trying to protect that individual's right to have a fair and complete trial, and to have the best possible opportunity to maintain his or her freedom, and I am concerned about it.

I think it is a much bigger issue than the Supreme Court has given consideration to, and if you consider some of the points that you have made, we have a religious leader who I suppose is going to enter the penitentiary on the 20th of July, probably would have had a good chance of winning his case had either proper instructions been given to the very jury that was imposed upon him, really against his will, for a very frivolous reason, by the prosecutor, and I might add by the judge, in a case of first impression, it seems to me.

And the jury not being able to consider the most important issue involved in the case, and that is did he have the right to hold these funds and properties in trust for the church?

Maybe I am oversimplifying this, but I really do not think so.

As I read the record, I just thought that that is an extremely important issue, which combines with the other issue of his right to take the most protective way as a defendant in the freest land of all, which takes such great pains, and has from the beginning of this country, to protect the rights of the accused.

Mr. Ball, do you have any comments finally on this last point, and then I am going to let you two——

Mr. **Ball**. I think the exclusion of the religious consideration was perhaps the most egregious error that was committed in the case. I cannot imagine what reason there would have been, I know of none, for having done that.

Senator **Hatch**. How could you decide a case, the holding of the church funds, without any consideration was to what that church's rules and regulations and beliefs were?

Mr. **Ball**. In spite of what is now possibly going to happen to Reverend Moon, we at least have one small consolation, that this was a refusal, a denial of certiorari, that is to say it was not a definitive ruling on the merits of the question raised. That is small consolation.

Senator **Hatch**. I think that is a small consolation, but nevertheless it is a consolation.

I want to thank both of you for being here. I know that you both widely disagree from time to time. That is what really makes this country so great.

We have remarkable minds in the two of you, who can come together as has most of the religious community, at least in some instance, with this particular case, and I might add in the case being addressed as well.

So I really appreciated having both of you here. You have added a remarkable dimension to this particular hearing. It means so much to me as chairman of this committee. I have listened to so many hours of constitutional testimony over the last 4 years, and I do not know of any day or any particular hearing, where the Constitution and its particular applications were as articulately stated as by these two men here today.

I just want to thank you.

Mr. TRIBE. Thank you for those kind remarks. I appreciate the opportunity to be here.

Mr. BALL. I am honored to be with Larry Tribe on this occasion, and I deeply appreciate that the hearing is taking place.

Senator HATCH. I want to get you two together on a lot of other issues.

Now, I am going to go to our final panel here today, and that is a panel of a number of witnesses who are very important to this hearing.

They are Dr. D. James Kennedy, and I would like them to take their place at the table.

Dr. D. James Kennedy, senior minister of the Coral Ridge Presbyterian Church in Fort Lauderdale, FL, and president of the Coalition for Religious Liberty; Dr. Charles Stanley, pastor of the First Baptist Church in Atlanta, GA, and president of the Southern Baptist Convention, which has some 14 million members. He is also president of the In Touch Ministries; Dr. Herbert Titus, vice president for Academic Affairs of the Christian Broadcasting Network University in Virginia Beach, VA; my good friend, Dr. Edward V. Hill, pastor of the Mount Zion Missionary Baptist Church in Los Angeles, CA; and the Honorable John Buchanan, a good friend who is formerly a Congressman from State of Alabama, and who is now chairman of People for the American Way, he is chairman of the board.

We are delighted to have you gentlemen with us today.

I will say this, that I have to limit you to 5 minutes each, so that we will have some time for questions. I have another hearing that is equally as important this afternoon, starting in just a short while.

And so we will use these bulbs up here, green means you speak, when it comes to yellow, you have 1 minute left, and red means your time is up. And I would appreciate it if you would help me in this matter.

I would prefer to have some questions before the end of the day.

I understand Reverend Stanley is not here.

Dr. Kennedy, let us start with you.

STATEMENTS OF D. JAMES KENNEDY, SENIOR MINISTER, CORAL RIDGE PRESBYTERIAN CHURCH, FORT LAUDERDALE, FL; PRESIDENT, COALITION FOR RELIGIOUS LIBERTY AND PRESIDENT, EVANGELISM EXPLOSION INTERNATIONAL; HERBERT W. TITUS, DEAN AND PROFESSOR, SCHOOL OF PUBLIC POLICY, VICE PRESIDENT FOR ACADEMIC AFFAIRS, CBN UNIVERSITY, VIRGINIA BEACH, VA; EDWARD V. HILL, PASTOR, MOUNT ZION MISSIONARY BAPTIST CHURCH, LOS ANGELES, CA; AND JOHN BUCHANAN, JR., CHAIRMAN OF THE BOARD, PEOPLE FOR THE AMERICAN WAY, WASHINGTON, DC

Dr. KENNEDY. Thank you, Mr. Chairman. Ladies and gentlemen, it is a pleasure to be able to speak to these important issues.

We have heard about 6,000 or 7,000 Christian believers and others in this country who are presently being prosecuted. There are scores of cases before our courts. We have heard of ominous clouds of an escalation of religious persecution in this country, and I would like to address the question as to why this is happening. Why, all of a sudden, are we seeing such a spate of cases of religious persecution?

Every nation in the history of this world and every government has been based on some theistic and or antitheistic foundation. Egypt, Iran, Saudi Arabia based on Islam; India upon Hinduism; Israel upon Judaism; China formerly upon Buddhism. It is incontrovertible historically that America was founded upon Christian theism. But today we see another religion which is encroaching upon that foundation, and whenever you see a mass of cold air come into contact with a mass of warm air, there inevitably will be a storm front and there will be thunder clouds and lightning bolts. We have heard the roar of judicial thunder, we have seen the striking of executive thunderbolts, and we have heard from some who have received those bolts today. But that is what is taking place in American today, and that is essentially that the original foundations of this country, Christian theism, are being replaced by the tenants of a new religion, secular humanism.

In 1892, the Supreme Court of the United States, in the *Trinity* decision, examined all of the documents pertaining to the origin of this country and concluded with these words: "This is a religious people, this is a Christian nation." Some of the statements, of course, which they looked at at that time concerning the foundational documents of this country were such as the birth certificate of America, which was the—of course the statement drawn up by the Pilgrims as they landed in this country where they said having undertaken for the glory of God and advancement of the Christian faith, a voyage to plant the first colony in Virginia. The first constitution in 1639 of the fundamental orders of Connecticut state that they came "to preserve the liberty and purity of the gospel of our Lord Jesus Christ which we now profess." And furthermore, in 1643, when the New England colonies came together and formed the New England Confederation, the first confederation of various communities in this country, they stated this—

> Whereas we call came into these parts of America with one and the same end and aim, namely to advance the Kingdom of our Lord Jesus Christ and to enjoy the liberties of the gospel in purity and peace.

Time does not allow me to go over the literally scores or hundreds of other historical documents which establish this fact. But today securlar humanism, which is a religion according to the Humanist Manifesto of 1933 in which they declared nine times that they are a religion. The President of the Humanist Association wrote a book entitled "Humanism as a Religion." The dictionary defines humanism as a religion. Furthermore, the Supreme Court of the United States, in its decision in *Torcaso* v. *Watkins,* declared that humanism was one of the nontheistic religions in America. It is simply another name for atheism, and we have a conflict in this country between two religions, the religion of atheism, or humanism, and the religion of Christianity.

Now, every nation is going to be based upon one or the other of these: theism or antitheism. We find antitheistic nations such as Albania and the Soviet Union today which formed their laws upon an antitheistic base. We have this conflict which is taking place in America today. I believe that many people do not realize that this is the underlying cause for the amount of religious persecution that is now taking place.

All legislation is based upon morality. It is a lie which says that you cannot legislate morality. The truth is you cannot legislate anything but morality. We have laws against stealing and murder and rape because it is immoral to do those things.

Legislation is based upon morality; morality is based upon a theistic or antitheistic concept. Secular humanism has its whole ethical or moral agenda, which includes such things as abortion, suicide, euthanasia, free divorce, gambling, homosexuality, and many other ideas which had been historically repugnant to the moral standards of traditional Americans. They are busily engaged in forcing those views upon the American people, the very thing that they accuse us of doing, through legislative enactments. Already a great deal of their agenda has been enacted into legislation.

One of the means by which they have been doing this is through a distortion of the first amendment. I do not believe that the first amendment is dead, but I believe that it has been seriously distorted in our time.

For example, we frequently hear substituted for the first amendment the cliche of the separation of church and State or the wall of separation between church and State. The American Constitution does not teach the separation of church and State. It is however explicitly taught in the Soviet Constitution, article 52, which states that the church and the U.S.S.R. shall be separate from the state and the school from the church. But the American Constitution does not teach that.

The idea of a wall of separation between church and State derives from a private letter by Thomas Jefferson in 1802 to the Danbury Baptists in which he made the statement that there should be a wall of separation. The first amendment was a one-way street. It simply restrained the powers of the Federal Government: "Congress shall make no law respecting an establishment of religion;" Congress shall make no law "prohibiting the free exercise thereof." It said nothing about what the church or clergymen or Christians or believers of any other sort should do or should not do. A wall, however, restricts people on either side of the wall equally.

The idea of a free press is also a one-way street. It was that the Government should not interfere with the press, but if we said that there should be a wall between the State and the press, then we could prosecute the press every time it transgresses that imaginary line which, of course, would be the destruction of a free press. This is precisely what is happening in religion today. I am dismayed that we have no more time to discuss the underlying ramifications of these particular issues that we have heard today.

Senator HATCH. I am also, but I will be happy to keep the record open so that you can submit additional information to us. We will be happy to have that, Dr. Kennedy. We apologize that we are always pressured around here.

[Material submitted for the record follows:]

PREPARED STATEMENT OF D. JAMES KENNEDY

There are today several ominous movements going on in America and in the Western world, for the most part undetected by Christians, which I think portend great evil for the Church unless we understand them and do something about them. There is, first of all, a tremendous change that is coming about in the relationship of the Church and the state in America. It is happening so slowly that we are like that frog sitting in the pot of warm water which is gradually being heated to the boiling point. The frog just sits there and is slowly boiled to death. Like the frog, we do not even perceive what is happening! We have today, dominant in this country and accepted by 99% of the people, a view of the relationship of church and state which is almost diametrically opposite to that which was taught by the founding fathers of this country and which was expressed in the First Amendment of our Constitution. Yet, how many people are aware of that. If it goes unchecked much further it will, as it is beginning to do right now, bring about the destruction of the liberties of Christians in this land!

Does the First Amendment teach the separation of church and state? I venture to say that 95% of the people in America today have been brainwashed into the place where they would say 'yes.' But it does not! I think it is vital that we understand what the First Amendment to the Constitution says, because the relationship between these two 'kingdoms' has been a long and difficult one. The founding fathers of this country, I think, resolved that question in a marvelous way but it is being completely destroyed in our time – and most people are not even aware of it. The First Amendment states: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." Question: What does that say about what the Church can or cannot do? What does that say about what a Christian citizen should or should not do? What? Absolutely nothing! It says, "*Congress* shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." It says nothing about the Church! The First Amendment teaches *the separation of the state from the Church.* Well, where did we get this idea of a 'wall of separation between Church and state'? That does not come out of the First Amendment. That comes from a private letter written by Thomas Jefferson in 1802 to the Danbury Baptists in Connecticut. He said, there should be "a wall of separation between Church and state." Now, what is the difference between that and the First Amendment?

Our religious liberties depend on a proper perception of the difference between those two things. The First Amendment is a *one way street.* It restrains the Federal government. The Bill of Rights was written to restrain the Federal government from interfering with the liberties of the people, because they were afraid that the people of this new country would not accept the new Constitution unless the rights of the people were further defined and protected. "A wall of separation," on the other hand, is most emphatically a *two way street.* It prohibits and restrains those on one side of the wall equally as much as it restrains those on the other side of the wall. Now we have a two way street. But in the last several decades what has been happening? It has been turned around until now we again have virtually a one way street moving *in the opposite direction,* so that 98% of the time in the last year (ask yourself if this is not true) when you heard the phrase 'separation of Church and state' what was being discussed was: What the *Church shall or shall not do.* That's 180 degrees off from the First Amendment of the Constitution! Now the Federal government is unshackling itself from the First Amendment, and the shackles are being put on the Church!

Our freedoms are in grave jeopardy today and we sit like the frog in the pot as the water heats up.

Another ominous tendency is seen in the silent legal revolution going on in the Western world today. How many times have you heard it said that you can't legislate morality? Hitler was right! You can tell the big lie so often and so loud that people will come to believe it! "You can't legislate morality!" Like the separation of church and state, I am sure that the vast majority of Americans would say to that statement, "Of course you can't!" But I would simply like to ask this question, my friend: "If you can't legislate morality, pray tell me what can you legislate?" Immorality? The fact of the matter is that you cannot legislate anything but morality! We have laws against murder because it is immoral to murder; we have laws against stealing because it is immoral to steal; we have laws against rape because it is immoral to rape. This country's legislative enactments were founded incontrovertibly upon the Judeo-Christian Ethic of the founding fathers of this country. Even Thomas Jefferson, who certainly was the least evangelical of the founders of this country, said in his Charter for the University of Virginia, that the proofs for God as the sovereign Lord and Creator and Ruler of this world and of the moral requirements and obligations which flow from that, must be taught to all students. The legislation of this country was based upon Christian morality as revealed in the Word of God. This is where we derived our morality.

However, for the last four decades we have seen in this nation that the Christian morality is slowly being replaced by the secular humanist morality as the foundation for legislative enactments. When that substitution is complete you will find yourself living in an America very alien from anything that you have known. When all of their so-called ethical agenda has successfully been transformed into legislation this will be a different country than ever it was before. Such things as abortion (and you might consider the degree of success which they have already had), infanticide, homosexuality, free divorce, euthanasia, gambling, pornography, and suicide are simply a portion of the ethical agenda of the secular humanist, along with the total complete removal of every single public vestige of Christian faith and religion and belief in God that has made this country great. That is their agenda and they are eagerly and determinately and assidiously engaged in enacting it as the foundation of this country's legislation under the false teaching that the government of the United States is supposed to be neutral concerning God. They are taking the concept that we are not to have an established Church and moving from that to the concept that the government is neutral concerning God.

That is a concept which is worse than heathenism because even heathenism is based upon the belief in some deity! All government is based upon some religious or anti-religious system. What that means for us today, I think, is a very serious matter. This nation was never meant to be neutral toward God. James Madison, who wrote the Constitution, said that we cannot govern without God and the Ten Commandments. Now the Supreme Court, in its great wisdom, has said that the Ten Commandments cannot be put up on the walls of the schools of Kentucky – yet they are carved on the walls of the Supreme Court building! And the man who wrote the Constitution that they are interpreting, said that we cannot govern without them!

George Washington said it would be impossible to govern without God and the Bible. The founders of this nation never intended for this to be a nation which was neutral toward God. They did not hesitate to call upon God. They did not hesitate to mention God in their public utterances and in public buildings. They did not hesitate at all to make mention of Him or offer thanksgiving to Him for His goodness and providence; or to set aside special days of praise and prayer and thanksgiving to God, or establish chaplaincies for the Senate and House of Representatives and the Armed Services.

Now we are moving irresistibly toward the Soviet-Communist concept of separation of Church and state, and that is very very dangerous. The Soviets pride themselves on the fact that they believe in the separation of Church and state, and America is moving rapidly to adopt their view. What is their view? It is simply this: the Church is free to do anything that the government is not engaged in – and the government is engaged in almost everything! Therefore, the Church is free to stay within its four walls, pray, and sing hymns, and if it does anything else it is in big trouble.

That is what is happening in America and, unfortunately, many churches and pastors and Christians are accepting it and even defending it!! It is the same sort of defeatist approach that we have taken toward the containment of Communism for the last forty years; that is, we have adopted the Communist view of our government toward religion. Remember what they said? The Communists said that what's mine is mine and what's yours is negotiable. And now that is what the government is saying! They are saying, What is ours is ours and it is political; therefore, it is out of bounds for you. And what is yours is negotiable because what is religious today and spiritual today may be political tomorrow when we rule it to be legal. For example: abortion, homosexuality, suicide, or anything else. When that happens, it is like the churches in California who were asked to sign statements, such as: Have you made any statements in the past year concerning such *political* matters as abortion, homosexuality, etc. What's mine is mine and what's yours is negotiable and we're going to negotiate you right into a little tiny closet! American Christians are sitting around just letting it happen, like the proverbial frog. And do you know why? Because we're afraid –

we're afraid of the flack; we're afraid of the controversy. We've run and we've hid under our beds. We've forgotten the words of Scripture: "Fear not." Gentlemen, if you are going to be leaders, one thing that is called for is courage. I want to tell you, the secular humanists have declared war on Christianity in this country and at the moment they are winning the war.

Humanism is a religion. This is declared nine times in the Humanist Manifesto of 1933, and in the second Humanist Manifesto in 1973. It is declared repeatedly that it is a religion. The dictionary declares it to be a religion. The secular humanists declare it to be a religion. The Supreme Court in "Torcaso v. Watkins" has declared that secular humanism is one of the several non-theistic religions operating in this country. You don't have to believe in God to have a religion. Buddhism is non-theistic, as is Taoism, as is ethical culturism -- these are some non-theistic religions, according to the Supreme Court. Yet secular humanism with its tenets of atheism, evolution, amorality, socialism, and one world government, is taught in virtually all the public schools of this country. Therefore, secular humanism has become an established religion in this country over the last several decades, primarily through the work of such men as John Dewey and other signers of the secular Humanist Manifesto. It has become the established religion of America. Last year $31 billion plus was spent by the Federal government on our public educational system with its establishment of the religion of secular humanism. The Supreme Court has declared that our schools cannot teach any religion, yet the same Supreme Court has declared that secular humanism is a religion!

Senator HATCH. Dr. Titus, let us go to you and take your testimony at this time.

STATEMENT OF DR. HERBERT W. TITUS

Dr. TITUS. Mr. chairman, thank you very much.

Ladies and gentlemen, as Dr. Kennedy has so eloquently pointed out, we are at war over religious freedom in America, and it is a war between two faiths. On one side of the battle are those who believe that our constitutional guarantees of religious freedom are God given, fixed and governed by the words and intent of our forefathers who wrote the Constitution of the United States and of the 50 States.

On the other side are those who believe that our religious freedoms are "man" invented, evolving, and authoritatively defined by the judges who sit on the highest courts of the land.

While the major battleground is in the U.S. Supreme Court, we have heard testimony that the war is from coast to coast. But on each battleground, we who cherish the liberties of our forefathers are fighting on two fronts. On one front we face an enemy who, in the name of separation of church and state, seeks to exclude religion totally from the public affairs of the Nation. For example, a recent editorial in a major newspaper has criticized President Reagan for a speech in which he called the American people to return to the religious faith of our Nation's founders.

This front has been extended from the news media into the courts with the recent effort by the ACLU and others to stop this Congress and the President from proclaiming 1983 as "The Year of the Bible." While this particular effort has not met with success, the same protagonists have successfully won the fight in the courts to keep the Bible as the Word of God not only out of the public school classroom but off public school grounds almost altogether.

In the name of freedom from the establishment of religion, these enemies of true religious freedom call for total exclusion of religion from all public life. That call for total exclusion rejects the original purpose of the Establishment Clause.

The first U.S. Congress, author of the first amendment of the Constitution, without hesitation asked President George Washington to issue a national declaration of a public day of thanksgiving and prayer. Washington's proclamation reads in part:

> Whereas it is the duty of all nations to acknowledge the providence of Almighty God, to obey His will, to be grateful for His benefits, and humbly to implore His protection and favor. Now, therefore, I do recommend and assign Thursday, the 26th day of November next, to be devoted by people of these States to the service of that great and glorious Being, and also that we may then unite in most humbly offering our prayers and supplications to the great Lord and Ruler of nations, and beseech Him to pardon our national and other transgressions.

Both or first Congress and our first President knew that proclamations and other statements that encouraged religion did not constitute an "establishment" of religion prohibited by the Constitution.

On the second battlefront, we face an enemy who, in the name of compelling State interest, seeks to reduce religion and religious liberty to a puny self-centered claim of conscientious objection. Just recently, this Congress repealed its 50-year commitment that exempted nonprofit organizations from the social security employment tax. Now, churches, religious organizations and other like employers must pay a tax on the privilege of hiring people to assist them to proclaim the truth and otherwise to carry out their ministeries. Allowing an exemption favoring only a few who are conscientiously opposed to the Social Security System, Congress, because of a so-called compelling interest to find additional money to save a financially ailing Social Security System, has, for the first time in its history, levied a direct tax on the churches of America.

This drive toward total control has not been confined to Congress nor to economic matters. In State after State, legislatures have steadily expanded their control over education. Just this year, for example, the Virginia House of Delegates enacted a law extending State regulation of education into the home allowing for only one exception favoring those few students and parents whose religious beliefs require home education without such control. In the name of a compelling interest to mold its citizenry as it thinks best, Virginia seeks to capture the hearts and minds of the children from their parents.

Yet, in the early history of the American Republic, men like Madison and Jefferson fought for the freedom from just this kind of State control. In their famous statements against the efforts in Virginia to establish tax-supported schools, they called for a rule of law that kept man's mind free from the coercive power of the civil authorities. Jefferson's speech before the Virginia General Assembly is illustrative:

> Well aware that Almighty God hath created the mind free; that all attempts to influence it by temporal punishment or burdens, or by civil incapacitations, . . . are a departure from the plan of the Holy Author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in His Almighty power to do; that the impious persumption of legislators and rulers * * * who * * * have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world, and through all time; that to compel a man to

furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrranical * * *

That is Jefferson.

If this war on these two fronts is to be won by those who believe in the heritage of religious freedom left by our forefathers, then we must decisively reject the political and legal faith that today dominates the courts, the legislatures, the Executive Offices, the media, and the classrooms in Ameirca, and return to the faith of our fathers.

It was not until the mid-19th century that America's scholars became increasingly dissatisfied with the legal and political faith of their Nation's founders, a faith based upon a belief in Almighty God. Under the influence of Darwin's new evolutionary theory about the origin of the universe of man, American jurisprudence shifted to a new assumption that judges did not discover law, but that they in fact made it.

This legal philosophy dominates today's law schools in America. Under this view, law, having been liberated from fixed principles, had become subject to judges who make decisions according to changing social values and changing factual circumstances.

The fixed law that originally guaranteed our religious freedom has been discarded in favor of a new set of evanescent rules invented by judges. And I do not have time at this time to go into some of those rules, but we find that the court had invented a distinction between science and religion based upon Clarence Darrow's definition of religion when he was an advocate for evolutionary faith.

In the early history of the Christian church, the religious department of the Roman Empire commanded the Apostles to stop teaching in the name of Jesus. Having been taught well by their Master to render to Caesar only that which belonged to Ceasar, the church fathers answered: "We ought to obey God rather than men." Acts 5:29. This biblical lesson of jurisdiction inspired America's forefathers to write a constitutional guarantee of religious freedom that would protect themselves and future generations from civil Government tyranny. Only if that jurisdictional principle remains fixed and absolute in American constitutional law will the people remain free.

Thank you.

Senator HATCH. Thank you, Dr. Titus.

[Material submitted for the record follows:]

PREPARED STATEMENT OF HERBERT W. TITUS

My name is Herbert W. Titus. I am Vice President for Academic Affairs, Dean and Professor of Law in the School of Public Policy, CBN University, Virginia Beach, Virginia. I hold the Juris Doctor degree from the Harvard Law School and have taught and written on constitutional law for approximately twenty years.

CBN University is closely affiliated with the Christian Broadcasting Network, Inc. Both organizations have been incorporated as non-profit religious organizations under the laws of the Commonwealth of Virginia.

A WAR BETWEEN TWO FAITHS

We are at war over religious freedom in America. It is a war between two faiths. On the one side of the battle are those who believe that our constitutional guarantees of religious freedom are God-given, fixed, and governed by the words and intent of our forefathers who wrote the Constitutions of the United States and of the fifty states. On the other side are those who believe that our religious freedoms are man-invented, evolving, and authoritatively defined by the judges who sit on the highest courts of the land.

While the major battleground in this war is the United States Supreme Court, skirmishes have been taking place in the lower federal courts and in the state and local courts across the nation. Other battles have occupied legislative bodies and executive offices and agencies at the local, state, and national level. Moreover, they have been waged before school boards, in classrooms, in newspapers and magazines, over television, and even in the churches.

On each battleground, we who cherish the liberties of our forefathers are fighting on two fronts. On one front, we face an enemy who, in the name of separation of church and state, seeks to exclude religion totally from the public affairs of the nation. For example, a recent editorial in a major newspaper has criticized President Reagan for a speech in which he called the American people to return to the religious faith of our nation's founders. Even his customary, "Good night and God bless you," has become suspect to those in the media who believe that such references to God by the President have no place in a pluralistic society.

This front has been extended from the news media into the courts with the recent effort by the A.C.L.U. and others to stop this Congress and the President from proclaiming 1983 as "The Year of the Bible." While this particular effort has not met with success, these same protagonists have successfully won the fight in the courts to keep the Bible as the Word of God not only out of the public school classroom but off public school grounds altogether.

In the name of freedom from the "establishment of religion," these enemies of true religious freedom call for total exclusion of religion from all public life. That call for total exclusion rejects the original purpose of the Establishment Clause. The first United States Congress, author of the First Amendment of the Constitution, without hesitation asked President George Washington to issue a national declaration of a public day of "Thanksgiving and Prayer." In response, and approximately six months into his first term of office, President Washington issued the first National Thanksgiving Proclamation which reads, in part:

> Whereas it is the duty of all nations to acknowledge the providence of Almighty God, to obey His will, to be grateful for His benefits, and humbly to implore His protection and favor. . . Now, therefore, I do recommend and assign Thursday, the 26th day of November next, to be devoted by people of these States to the service of that great and glorious Being. . . And also that we may then unite in most humbly offering our prayers and supplications to the great Lord and Ruler of nations, and beseech Him to pardon our national and other transgressions. . . ."

Both our first Congress and our first president knew that proclamations and other statements that encouraged religion did not constitute an "establishment" of religion prohibited by the Constitution.

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This drive toward total control has not been confined to Congress nor to economic matters. In state after state, legislatures have steadily expanded their control over education. Just this year, for example, the Virginia House of Delegates enacted a law extending state regulation of education into the home allowing for only one exception favoring those few students and parents whose religious beliefs require home education without such control. In the name of a "compelling interest" to mold its citizenry as it thinks best, Virginia seeks to capture the hearts and minds of the children from their parents.

Yet in the early history of the American Republic, men like Madison and Jefferson fought for freedom from just this kind of state control. In their famous statements against the efforts in Virginia to establish tax-supported schools, they called for a rule of law that kept man's mind free from the coercive power of the civil authorities. Jefferson's speech before the Virginia General Assembly is illustrative:

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If this war on these two fronts is to be won by those who believe in the heritage of religious freedom left by our forefathers, then we must decisively reject the political and legal faith that today dominates the courts, the legislatures, the executive offices, the media, and the classrooms in America, and return to the faith of our fathers.

RELIGIOUS LIBERTY AND THE FAITH OF OUR FATHERS

At the heart of religious liberty as understood by our nation's Fathers was their definition of religion and the declaration of its jurisdictional immunity from state interference as exemplified by section 16 of the June 12, 1776, Virginia Bill of Rights:

That religion, or the duty which we owe to our Creator, and the

> manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience . . . .

In his famous "Memorial and Remonstrance on the Religious Rights of Man," James Madison, speaking in opposition to proposed state legislation to levy a tax in order to support teachers of the Christian religion, explained this constitutional text as follows:

> We remonstrate against said Bill, . . . Because we hold it for a fundamental and undeniable truth, 'that religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only be reason and conviction, not by force or violence.' The religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable; because the opinions of men, depending only on the evidence contemplated by their own minds, cannot follow the dictates of other men; it is unalienable also; because what is here a right towards men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him. This duty is precedent both in order of time and degree of obligation to the claims of Civil Society.

To Madison, and his fellow colleagues (including Jefferson), religious freedom was a God-given right, fixed and recognized by the Constitution. This view of religion presupposed a Creator from whom such rights were derived. This creationist world-view, in turn, shaped the definition of religion embraced by Madison and his congressional colleagues in formulating the First Amendment. Hence, to remain true to the original intent of the Framers of the First Amendment, one cannot examine the religious rights guaranteed thereby on the basis of Darwinian, evolutionist methodology. To the contrary, the word "religion" was used to recognize that the Creator had ordained a legal order that pre-existed all civil societies, including the unalienable right to perform those duties owed exclusively to the Creator free from civil government interference.

Recognition of this founding faith led naturally to a proper accommodation and even encouragement of those things properly religious. As Justice Stephen Field of the United States Supreme Court pointed out in his opinion in Davis v. Beason, 133 U.S. 333 (1889), some activities fall totally outside the jurisdiction of the civil government. These enjoy the protection of the free exercise clause of the First Amendment. Among the protected areas, to name a few, are opinions and beliefs, worship, evangelization, qualifications of pastors, pastoral counseling, and the tithes and offerings of the people.

These are examples of duties owed to God over which Caesar has no jurisdiction because they are matters subject to "reason and conviction" and not to "force or violence" as the 1776 Virginia Constitution reminds us.

Early Congresses steered clear from these activities that belonged exclusively to God. However, in those areas where they clearly had jurisdiction, they did not hesitate to make religious preferences. As Chief Justice Berger pointed out in Marsh v. Chambers, ----- U.S. -----, 51 U.S.L.W. 5163 (1983), the same Congress that approved the Bill of Rights authorized the appointment of paid chaplains. Moreover, Article III of the Northwest Ordinance, enacted by Congress on July 13, 1787, included the sentence: "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." Justice William O. Douglas' opinion for the U.S. Supreme Court in Zorach v. Clauson 343 U.S. 306 (1952) stands squarely within this early principle:

> The government...may not make a religious observance compulsory. It may not coerce anyone to attend church, to observe a religious holiday, or to take religious instruction. But it can close its doors or suspend its operations as to those who want to repair to their religious sanctuary for worship or instruction.

As a further example, under guidelines such as these, the government may continue to supply chaplains, to build chapels, and to provide other opportunities for religious worship to members of the armed forces so long as no coercive measures accompany such programs and so long as they are within the jurisdiction of the government to raise, support, maintain, regulate, and discipline those forces. Moreover, the federal government, constitutionally authorized "to coin money," may, therefore, afix the inscription, "In God we Trust", as the official statement of the government's monetary policy, namely, that the people trust in God and not mammon. Given the jurisdictional boundary set by the two religion clauses, the Framers constructed a scheme of civil government which was designed to avoid any conflict between God and Caesar. They allowed no appeal to any "compelling state interest" to justify government interference into any activity that belonged exclusively to God; at the same time, they rejected any argument for "religious neutrality" to prevent government regulation of activities outside that exclusive authority. Thus, a citizen would never be forced to choose between obeying his duty to his Creator or his obligations under the law of the civil authorities. Because the Framers believed that these duties had been forever fixed by an all-knowing and benevolent Creator, they had confidence that America would steer a well-charted course between the Scylla of religious anarchy and the Charybdis of religious totalitarianism.

- 7 -

RELIGIOUS LIBERTY AND THE FAITH OF THE SCHOLARS AND THE JUDGES

Beginning with the mid-nineteenth century, America's scholars became increasingly dissatisfied with the legal and political faith of their nation's founders. Under the influence of Darwin's new evolutionary theory about the origin of the universe and of man, American jurisprudence shifted to a new assumption that judges did not discover law, but that they, in fact, made it.

This legal philosophy is today's conventional wisdom taught in almost every law school in America. So widely held is this view that Laurence Tribe, professor of law at Harvard, stated with confidence and without discussion in the preface to his treatise on American Constitutional Law: "The Constitution is an intentionally incomplete, often deliberately indeterminate structure for the participatory evolution of political ideas and governmental practices."

Under this view, law, having been "liberated" from fixed principles, has become subject to judges who make decisions according to changing social values and changing factual circumstances. The fixed law that originally guaranteed our religious freedoms has been discarded in favor of a new set of evanescent rules invented by judges.

Since 1971, the United States Supreme Court has articulated a three-part test governing the constitutionality of religious claims under the First Amendment's Establishment Clause. Lemon v. Kurtzman, 403 U.S. 602, 612-613 (1971). At the heart of this test is the Court's distinction between the "secular" and the "religious." Although the Court has never carefully explained this distinction, it has consistently followed a pattern of decisions that reflects the definition offered by Justice John Paul Stevens in his concurring and dissenting opinion in Wolman v. Walters, 433 U.S. 263 (1978): "The distinction between the religious and secular is a fundamental one. To quote from Clarence Darrow's argument in the Scopes case: 'The realm of religion...is where knowledge leaves off, and faith begins. . . .'"

This evolutionary faith, that the religious freedom clauses separated out two kinds of "subject matters" and allocated one, "science," to the state, and another, "religion," to the church, has led the courts to exclude all God-revealed knowledge from the public school classroom. For example, Justice Tom Clark in Abington School District v. Schempp, 374, U.S. 203, (1963) ruled that the Bible may be taught in the public schools, but only if it is not presented as the Word of God. Following in these footsteps, a lower federal court judge has ruled that the creationist view of the origin of the world and of man may not be taught in the public schools because, based upon revealed truth, it is necessarily religious. McLean v. Arkansas Bd. of Education, No. LRC 81-322 (E.D. Ark. 1982)

Moreover, the Supreme Court has held that the posting of the Ten Commandments upon a public school classroom wall violates the Establishment Clause because the first four of those commandments are necessarily "religious," while only the last six could possibly be "secular." Stone v. Graham, 449 U.S. 39, 41-42 (1980). By this decision the Court has suggested that some topics, like belief in God, must be totally excluded from the public school classroom because such a belief is not empirically verifiable.

Moreover, the Court has claimed that it must separate the "religious" from the "secular" in order to achieve its own goal of religious neutrality in the public affairs of the nation. That stated goal has invited attacks upon such long-standing practices as legislative and armed services chaplaincies. See, e.g., Marsh v. Chambers, ----- U.S. -----, 51 L.W. 5162 (1983). While the Court has rightfully rejected these efforts to eliminate all religious values from the law, it has pursued its policy of neutrality in the public schools to the complete and total exclusion of this country's Christian heritage from the public schools. A position such as this can be "neutral" only if one adopts the Court's assumption that God need not be consulted in man's search for truth. That was not the faith of our forefathers.

This difference of faith has inevitably brought the Court into conflict with the Constitution so that it must disregard the constitutional text and historic meaning of the religious freedom clauses. Thus, Justice Brennan, concluding that the Nebraska legislative chaplaincy practice violated the Establishment Clause, dismissed past presidential practices, past scholarly expositions, and past congressional intentions to the contrary as no longer relevant. Marsh v. Chambers, ----- U.S. -----, 51 L.W. at 5171. Happily, the majority disagreed and sustained the practice, but only after it had refused to apply its own three-part test.

While the evolutionary faith of Justice Brennan did not prevail in the Marsh v. Chambers case, his views have dominated "free exercise" cases since he wrote Sherbert v. Verner, 374 U.S. 398 (1963). Armed with the Sherbert formula, namely, that any claim to religious liberty must be subordinated to a "compelling state interest," the Court has sometimes ruled in favor of religious liberty and sometimes against it dependent solely upon its views of "public policy." For example, the Court has ruled in favor of Amish parents who have refused to send their children to school past the eighth grade, but has ruled against an Amish employer who has refused to pay the social security employment tax. Wisconsin v. Yoder, 406 U.S. 205 (1972) and United States v. Lee, 101 U.S. 1051 (1982). While the Court has conceded that both claims were religious, it found the state's interest in preparing a "child for life in modern society" not of such magnitude to require education past the eighth grade when such a child lives in the Amish separated and self-sufficient agrarian community. On the other hand, the Court has found the social security system's need for funds of such a magnitude as to outweigh the Amish claim even when made by those living in that same separated and self-sufficient agrarian community.

Rulings such as these are based upon the assumption that the civil government has total jurisdiction over all but a small corner of a few peoples' religious lives that in the Court's estimation will not interfere with important government policies. That is, in fact, the foundation of the Court's recent ruling in the Bob Jones University Case. Indeed, the unstated assumptions of Bob Jones are that tax exemptions are benefits conferred by the civil government, not given by God, and that education belongs to the civil government, not to the people. Both assumptions, if followed in pursuit of the Court's version of "public policy," will inexorably reduce religious freedom in America to that which is found today in the Soviet Union -- old people may worship God within the four walls of a church building, but outside those walls a state-endorsed religion of materialism governs everyone.

CONCLUSION

In the early history of the Christian church, the religious department of the Roman Empire commanded the apostles to stop teaching in the name of Jesus. Having been taught well by their Master to render to Caesar only that which belonged to Caesar, the church fathers answered: "We ought to obey God rather than men." Acts 5:29.

This biblical lesson of jurisdiction inspired America's forefathers to write a constitutional guarantee of religious freedom that would protect themselves and future generations from civil government tyranny. Only if that jurisdictional principle remains fixed and absolute in American constitutional law will the people remain free. Changing constitutional principles in order to accommodate changes in circumstances and values does not yield "a living Constitution" as some believe. To the contrary, adhering strictly to the original terms, neither adding to nor subtracting from them, is the only assurance of true liberty and prosperity. It is as Moses spoke to the people of Israel: "Keep . . . the words of this covenant, and do them that ye may prosper in all that ye do." (Deuteronomy 29:9)

While the majority decision in Marsh v. Chambers offers some hope that the Court, and therefore the nation, will return to the original understanding of religion as understood by the Framers, the American people must vigilantly pray for and select leaders who will make it their commitment to interpret and apply the constitutional text according to its historic meaning rooted in the Framers' faith in God.

Senator **Hatch**. Let us turn to you now, Dr. Hill. We are very interested in taking your testimony.

STATEMENT OF DR. EDWARD V. HILL

Dr. **Hill**. Thank you, Mr. Chairman, Senator Leahy.

The first thing I want to say is that I am sorry Senator, I think it is DeConcini, left. I wanted to assure him that this court system that I appreciate and this court of law once upon a time ruled that persons of my color was not even a person. And then finally they agreed that we were a percent of a human being and then, many years later, they decided we were a human being that needed to be segregated. So it is not the holy cow. It is not as holy as one might think. It is improving but it has a long ways to go.

And even in the primaries that we have just ended in Mississippi, Alabama, and Georgia, we see double primaries, we see double standards of registration. So let us keep moving and trying to improve it.

I do not think we really have a problem. The problem really—rather did not surface when the church was defined a religious freedom as just some place to worship. But there is something that has been happening in this country, and that is as a result of our worship, something greater is happening, and that is people want to be a part of the church and they want the church to be the church. Lives are being changed. People are conforming their lives to the word of God as they see it as being led by the Holy Spirit. New lifestyles are coming forward.

Thus they are turning to the church and to the pastor, not to the social leaders, not to the mayor, and what have you, but to the pastors, and seeking a new lifestyle. And they are seeking directions and help. And so, all of a sudden, the church must not only just gather a group to worship at a given time but, all of a sudden, the church now must respond to the needs and to the requests for leadership that the people throughout this great country is asking the church. Thus it has become, particularly in my State, necessary for a church in order to respond to the needs of the people and to minister to the total man, to become what is known as a nonprofit corporation, 501(c)(3) in the State—I mean in the Nation and to qualify in the State of California. And that is where the whole bag of worms, can of worms came open. Because once we qualify now as a nonprofit corporation, most States look upon us just as that, not a church, not a gospel movement, not a movement of God, but simply a nonprofit corporation to which every agent and all kinds of institutions in the State feel that they have a right to come in now that you are a nonprofit corporation and adjust your rules and regulations to the standards of what a State says a nonprofit corporation ought to be. They make no distinction between nonprofit, charitable corporations, like the Red Cross, over against a congregational controlled, nonprofit corporation church. And there is a great distinction.

One is organized to try to help and to bring help to suffering humanity in a physical manner. One is ordained of God to bring about a total help, both spiritual and physical. But when all of these agencies, simply because you now have qualified, as Mount

Zion Baptist Church, a nonprofit corporation, all of these agencies now under that nonprofit status can come in now and let me see this, let me see this. When we try to build homes for the elderly, we have to have a nonprofit status, but that is an extension of the church. When we try to help the unemployed youth, when we try to help the hungry people in order to receive certain grants and what have you, we have to have a nonprofit status. We are flooded with agencies that probably—as Senators I know you know they exist, but you do not know the multitude in which they exist and the many times that they knock on our door at such a level. And I want to tell you if there is any such thing as a hostile anti-Christ, anti-church group, it is in these agencies and bureauracies that come to us because we are not a church but a nonprofit corporation.

It is under that that the State of California sent out a letter 4 years ago that all churches would submit to the Secretary of State their sources of income, their lists of contributors, and what did they do with the money as a church.

Well, thanks be to God for our legislators. We moved that down right quick. But there were agencies who said because there are nonprofit organizations just like the Red Cross we ought to know about it because of this philosophy there are people who have moved into the courts without exhausting ecclesiastical ways of getting into it, they have moved into the courts, declared past and present officers out, conducted their own elections by people who are not even religious people, because of a nonprofit status, and on and on I could go if it were not for that satanic light up there. [Laughter.]

Senator LEAHY. Instruments of the Devil show up everywhere. [Laughter.]

I heard that light called a lot of things but this is the first time I heard it called that. [Laughter.]

Dr. HILL. Yes.

Senator LEAHY. I am sitting further away from it than you, Mr. Chairman.

Dr. HILL. That is another minute.

And what is happening, our religious freedom is not so much being snuffed out at the top, we have a President who is proclaiming it, we have Senators who love the Lord and who have prayer groups. But these eons of agencies who can come at us because we have the tax privilege and who disregard that we are nonprofit but church, and they have no concept that the church has its policing power, the church has its own inter—it is harder to get a contribution out of a Baptist Church of trustees than it is a Senate Appropriation Committee. [Laughter.]

But these people do not regard that. And there is also which we have chaos at the bottom and affirmation at the top but very few people ever meet you who are at the top. We deal with the people who are down in the gutter and they give us a heck of a time.

Thank you, Mr. Chairman. [Applause.]

Senator LEAHY. Mr. Chairman, I might note that at least like the implied applause in that, because we have had a number of people, I am sure—well, you may not get these kind of letters but some of us get these kinds of letters implying that when they are dealing with us, they are dealing with those down in the gutter. At least one witness feels somewhat different.

Sentor **Hatch**. I have heard us compared to this red light a few times. As the——

Sentor **Leahy**. In various ways.

Sentor **Hatch**. Yes, that is right.

Well, I have certainly enjoyed your testimoy. I think in your own eloquent way you have made a lot of very important points here today.

John we are happy to turn to you. You are our last witness. We appreciate having you here, and then we would like to ask some questions.

STATEMENT OF JOHN BUCHANAN

Mr. **Buchanan**. Thank you, Mr. Chairman. It is always a pleasure to appear before you, and I am here today singing my usual song, which is a song of celebration of the first amendment and for the wisdom of our forefathers in framing that amendment which is the cornerstone of the Bill of Rights and the most fundamental protection of our liberty.

Without discounting any of the concerns here earlier expressed, on your own concern, Mr. Chairman, because eternal vigilance is the price of liberty in our time, as in every time, we would urge the Senate to resist any and all attempts to weaken or dilute the first amendment.

We are celebrants of the diversity of our society.

I understand there are some 200 religious sects in the country today. We are a nation that has been composed not only of Christians, and although I have not met many, I understand secular humanists, but also Jews and Muslims and people of other faiths, and people of no faith at all. And the fact that the first amendment has created—has protected the individual freedom of conscience so that people as free moral beings in this society can choose what to believe and how to believe and practice. This is our most fundamental freedom.

We would urge therefore that no action be taken in the name of improving on the law which would in fact dilute the basic protections of the first amendment.

Now, we recognize that those same values which shape political beliefs also shape religious beliefs, and there is going to be some inevitable mixing of one's religious views and one's political views and activities and, therefore, we asked Jim Castelli, who is Washington bureau chief of Our Sunday Visitor, which is the largest U.S. Catholic weekly, to prepare for us an issue paper which is entitled "Ten Rules for Mixing Religion and Politics." The guidelines and principles that he iteates in that paper are in my written testimony and I would commend it to your attention.

Sentor **Hatch**. We would be happy to have it.

Mr. **Buchanan**. I would like to deal with one of the subjects, and that is the fact that government does have some right to demand that religious institutions comply with reasonable regulation and social policy.

I am an active member of the Riverside Baptist Church, at 680 I Street SW., Washington, DC. I would invite you all to come to church Sunday. It is wonderful. But, we have not yet organized a Baptist Fire Brigade, so if our church would catch fire on Sunday, we would call the D.C. Fire Department. It is therefore reasonable that we in our building must comply with those basic fire and safety codes.

More seriously, many terrible things have been done historically in the name of religion. The Crusades, the Inquisition, the religious wars and persecution, Baptists in Virginia were beaten and imprisoned and run out of town for proclaiming their Baptist faith. We know the story of the Mormons in the United States. Many things have been done in the name of religion that were wrong, child sacrifice, the burning of people at the stake, the drowning of witches and so forth. So there must be some reasonable way for society to expect basic compliance with law on the part of religious groups and religious persons. And it seems to me, for example, as the Supreme Justice Warren Burger of the Supreme Court said, pertaining to the *Bob Jones* case, that:

> Denial of tax benefits will inevitably have a significant impact on the operation of private religious schools, but will not prevent those schools from observing their religious tenets. The Government has a fundamental overriding interest in eradicating racial discrimination in education. That Government interest substantially outweighs whatever burden denial of tax benefits places on petitioners' exercise of their religious beliefs.

It is not always easy to delineate where the line must be drawn. But it seems to me, Mr. Chairman, that in such a basic matter as civil rights, that our society has no more important business than to make sure that every person born into this society, regardless of that person's sex or race or economic condition, or geographic location, has every opportunity and every incentive to become the most, the best that is in that person to be, to rise to that person's full stature and fulfill whatever gifts God has given that person.

Now, as I, as a religious believer, believe that as a part of my religious belief, but it also seems to me that is so basic and fundamental a right of American citizens that the Constitutional civil rights of American citizens must be protected at all costs, and not even a religious group in the name of religion has the right to violate those most basic rights of our American citizens.

So we would urge that you look in depth at these difficult questions and that you, by all means, stand by the first amendment which for nearly 200 years has protected our rights. And that while recognizing that Government has some reasonable right to expect of religious people what it expects of all citizens, that the basic freedoms that we have been guaranteed to the wisdom of our Founding Fathers be protected in the way they have been for 200 years, and that is by cherishing and keeping the first amendment undiluted and unchanged, whatever else the Senate might wish to do.

[Material submitted for the record follows:]

PREPARED STATEMENT OF JOHN BUCHANAN, JR.

Mr. Chairman and Members of the Committee:

My name is John Buchanan and I am here today on behalf of People for the American Way, a nonprofit, nonpartisan, First Amendment citizens' group working to protect individual freedoms. I am pleased to appear today to present our views on the subject of religious freedom and the mixing of religion and politics.

Our only partisanship is on behalf of the constitutional liberties of American citizens — in 1984, an especially timely issue. This year, Americans will elect a President whose term will expire in 1989 — the year the Bill of Rights was proposed and the 201st anniversary of the Constitution. This constitution has been the guiding document for the oldest and most successful democracy on the face of the earth.

People for the American Way is working to ensure that on the bicentennial of the Constitution American citizens will continue to enjoy their full constitutional liberties.

I am making a profoundly conservative point — that both major parties, Democrats and Republicans, should resist any and all attempts to weaken or dilute the First Amendment to the Constitution. The First Amendment is the cornerstone of the Bill of Rights. It protects freedom of speech, of the press, and the right to petition. Above all, it is the guarantor of the individual citizen's freedom of conscience, and of the separation of church and state.

Like millions of deeply religious Americans, I believe in a strict construction of the First Amendment. I believe that the First Amendment means what it says: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..." The intent was not only to prevent organized religion from dominating government, but also — and equally important — to prevent government from interfering with the individual citizen's right to worship God as he or she chooses.

Assaults upon the First Amendment may take many forms: for instance, there is the recently debated proposed school prayer amendment.

There is no power on earth which can prevent a person of faith from praying in school or anywhere else. In fact, as Congressman Charles Rose once said, "As long as there are math tests, there will be prayer in public schools." Along with many main stream religious leaders, however, we have deep concerns about state-prescribed and state-composed prayer in the public schools.

Another threat comes from the host of proposals to declare the United States a "Christian" nation, as if there is a uniformity of belief among Catholics, Protestants, and believers in the Eastern Orthodox Church, and as if Jews and other members of minority religions are something less than first-class citizens.

The "Christian Nation" movement is part of a frightening new development in our national life — a misuse of religion for narrow political ends. Some critics claim that it is inappropriate to mix religion and politics. That claim, like the counter argument that religious leaders have a right to speak out on political issues, is often designed to end the discussion.

We are interested, however, in discussion, and to that end People For has just published an issue paper entitled "10 Rules for Mixing Religion and Politics" by Jim Castelli. Mr. Castelli is the Washington Bureau Chief for Our Sunday Visitor, the largest U.S. Catholic weekly, and author of a syndicated religion column. I would like to read from "10 Rules for Mixing Religion and Politics," because the points it makes address directly the matter before the subcommittee today.

Almost everyone mixes religion and politics to some degree. The same values that shape political beliefs also shape theological beliefs. Theologian Harvey Cox says "it is impossible to separate religion from politics because it is the same people who are both political beings and religious beings." And, in fact, barring political debate based on religious beliefs would violate the First Amendment's Free Exercise Clause.

What is needed, then, is not more pious rhetoric about mixing religion and politics, but guidelines as to what constitutes a legitimate mix — a "How-To Mix Religion and Politics." Because the people arguing the loudest about their right to bring moral issues into the political realm are often those trying the hardest to avoid any form of government regulation of religious institution, this "How-To" must also include guidelines for church-state interaction.

It's particularly important that Americans find a proper mix. The American system of religious pluralism is unique; it developed largely because people fled lands where the mix was improper — where religious dissent and diversity were not respected. But the same Founding Fathers who took such pains to preserve religious freedom also brought religious values to bear in shaping their new land. An analysis of U.S. history, constitutional law and political practice suggests some clear guidelines for mixing religion and politics.

I. RELIGIOUS DOCTRINE ALONE IS NOT AN ACCEPTABLE BASIS FOR PUBLIC POLICY.

While morality is a legitimate element of public debate, there is a crucial distinction between morality and doctrine. Morality is generic; Jews, Catholics, Baptists, Buddhists and atheists can all agree that murder is a crime or debate the morality of foreign aid, for example, despite their religious differences. But a religious doctrine on the other hand, is acceptable only to those who share a particular faith and is not open to reasonable debate.

The distinction is explained well by David Little, professor of religion and sociology at the University of Virginia. Describing the views of Roger Williams, the colonial Baptist known as the "father of American religious pluralism," Little discusses Williams' belief that "there existed an independent standard of public morality according to which governments might rightly be judged" and that "a commitment to religious pluralism must rest upon a shared belief that civil or public morality is determinable independent of religious beliefs." Little concludes that "In a pluralistic society, it is simply not appropriate in the public forum to give as a reason for a law or policy the fact that it is derived from the 'Word of God' or is 'dictated by the Bible.'"

Little notes that the Christian Right is inaccurate when it sees itself as merely doing what Martin Luther King and other religious leaders supporting civil rights and opposing the Vietnam War did in their time. Little states that anti-Vietnam War religious leaders cited the just war theory, not doctrine. And, he adds, "Martin Luther King made explicit and repeated appeals to the natural-law tradition, the American Constitution and the American heritage, which were combined with rather general references to the Christian tradition and to figures like Jesus and Gandhi. He did not advocate particular 'Bible-based legislation' or threaten to defeat candidates who did not conform to an explicitly religious position."

A contemporary religious leader, Cardinal Joseph Bernardin of Chicago, makes the same crucial distinction. In urging a "consistent ethic of life" that would link opposition to abortion to opposition to the use of nuclear weapons, capital punishment, social program budget cuts and the reliance on force in Central America, Bernardin said Catholics "face the challenge of stating our case, which is shaped in terms of our faith and our religious convictions, in non-religious terms which others of different faith convictions might find morally persuasive."

II. IT IS LEGITIMATE TO DISCUSS THE MORAL DIMENSION OF PUBLIC ISSUES.

This should be obvious, but some critics of the Christian Right overreact and try to push discussions of morality out of the public debate altogether; they are joined by many so-called "realists" who want to dismiss morality as irrelevant in foreign affairs. But American political debate would be unrecognizable without moral argument, just as it would be without organized religious involvement. Columnist George Will asserts that "American politics is currently afflicted by kinds of grim, moralizing groups that are coarse in their conceptions, vulgar in analysis and intemperate in advocacy. But the desirable alternative to such groups is not less preoccupation with this sort of question, but better preoccupation....Absent good moral argument, bad moral argument will have the field to itself."

The distinction between morality and doctrine makes it easy to see that while it may be arrogant to talk about forming a "Moral Majority," it is at least within the boundaries of pluralism, while talk of forming a "Christian Nation" is not. There are other examples:

** Federal Judge William Overton correctly held that "Scientific Creationism" should not be taught in the Arkansas public schools because it required a belief in a specific religious doctrine, a fundamentalist interpretation of the Book of Genesis.

** It's unacceptable to base a Middle East policy on a particular interpretation of the Bible. The fact that "Judea and Samaria" were part of Israel in the Old Testament is not a justification for Israel to annex the West Bank today. Similarly, it's unacceptable to base unconditional support of Israel on a doctrinal belief about the necessity of a converted Israel to set the stage for the Second Coming of Christ.

** While there is sufficient religious basis for the obligation to feed the hungry and clothe the naked, a Bible verse alone is no more an acceptable justification for supporting a government program or a specific funding level than it is for opposing the Equal Rights Amendment.

** Belief in the biblical concept of "an eye for an eye" is not an acceptable basis for supporting capital punishment; belief that capital punishment is wrong because it precludes the opportunity for the convicted person's conversion is not an acceptable basis for opposing it.

** It's acceptable to use moral arguments for or against a bilateral U.S.- Soviet nuclear freeze, but unacceptable to equate the freeze with godlessness or to condemn it on the basis that the Soviet Union is a "Satanic" power.

III. DISCUSSION OF MORALITY IS BEST APPLIED TO THE COMMON GOOD, NOT PRIVATE ACTION.

This is a time-worn principle that has come under recent attack, but it makes good sense for several reasons. First, there is far less consensus on the morality of private action than on public issues; this is particularly true in the area of sexual morality. Second, government cannot successfully enforce private morality that doesn't have a public manifestation; efforts to do so generally end up weakening respect for law.

On the other hand, government can enforce civil rights law because private bias has a public side — public discrimination against minorities.

Overemphasis on private morality can obscure the responsibility of religion and morality in protecting the common good. New York Gov. Mario Cuomo expressed this well in a speech at the Cathedral of St. John the Divine in New York City:

> To secure religious peace, the Constitution demanded tolerance. It said no group, not even a majority, has the right to force its religious views on any part of the community. It said that where matters of private morality are involved — belief or actions that don't impinge on other people or deprive them of their rights — the state has no right to intervene....Yet, our Constitution isn't simply an invitation to selfishness, for in it is also embodied a central truth of the Judeo-Christian tradition; that is, a sense of the common good. It says, as the Gospel says, that freedom isn't license; that liberty creates responsibility. That if we have been given freedom, it is to encourage us to pursue that common good.

IV. GOVERNMENT HAS A RIGHT TO DEMAND THAT RELIGIOUS INSTITUTIONS COMPLY WITH REASONABLE REGULATION AND SOCIAL POLICY.

The Constitution provides that while government must be neutral toward religion, it must also accomodate it; and accomodation is a two-way street. The same principle that requires government to make a reasonable accomodation to religion as a part of society requires religion to make a reasonable accomodation of government. Many fundamentalist talk of the "sovereign church" and view government as evil; they hold that because they believe in the Bible, they are virtually exempt from civil laws, a self-serving position with no constitutional basis. While the Christian Right likes to compare itself to the civil rights leaders of the 1960s, its approach has more in common with the anarchy of the Yippies than with the civil disobedience of Martin Luther King.

A number of fundamentalist and evangelical church leaders are seeking exemption from some of the most basic American legal requirements; not only at the Faith Christian School in Louisville, Nebraska, but in other instances as well:

** Fundamentalist groups, claiming "Spare the rod and spoil the child" have tried to weaken state and federal spouse and child abuse laws.

** Fundamentalists (as well as some mainline groups like the National Council of Churches) have supported Bob Jones University and other institutions which want to keep their tax-exempt status despite the fact that they discriminate on the basis of race. They argue that their racial policies are part of their religious belief.

** A number of fundamentalists and evangelicals support legislation proposed by Sen. Roger Jepsen (R-Iowa) and Rep. Mickey Edwards (R-Okla.) which would gut the Internal Revenue Service of its power to audit churches. The I.R.S. audits churches to insure that they are in fact churches and are paying the required tax on unrelated business income.

** Many Christian Right groups take the hard line position that Social Security payments are an unconstitutional tax. They are trying to win exemption from the new law making participation in the system mandatory for all nonprofit institutions.

The Supreme Court has consistently ruled that the government may place some restrictions on religious freedom if it has a "compelling interest." Recent rulings have upheld this approach on both tax and Social Security matters. The Court ruled in the Bob Jones case that the IRS may deny tax-exempt status to schools which discriminate on the basis of race, even when that discrimination is based in religious belief. Chief Justice Warren Burger said "Denial of tax benefits will inevitably have a significant impact on the operation of private religious schools, but will not prevent those schools from observing their religious tenets. The government has a fundamental, overriding interest in eradicating racial discrimination in education....That government interest substantially outweighs whatever burden denial of tax benefits places on petitioners' exercise of their religious beliefs."

On Social Security, mainline religious groups overwhelmingly support mandatory coverage for nonprofit institutions; 85 percent of all nonprofits were already covered before the new law took effect. The mainline churches also view the issue as one that involves the churches' responsibility — to their employees and to the public at large.

Last year, the Supreme Court reviewed a case in which an Amish farmer sought an exemption from paying the employer share of Social Security because of his religion's belief that church members had a responsibility to care for their own people. The Court acknowledged the sincerity of the farmer's belief, but said it was overridden by the government's "compelling interest" in keeping the Social Security system intact. If the court won't exempt the Amish, with a venerable tradition of caring for their own people, there's no reason to expect it to exempt other churches.

V. RELIGIOUS INSTITUTIONS MAY COOPERATE WITH GOVERNMENT IN PROGRAMS SUPPORTING THE COMMON GOOD.

The absolutist approach to church-state separation would bar this approach. For example, lawsuits have been filed seeking to ban as unconstitutional the use of federal funds for remedial reading and math programs for disadvantaged students in church-run schools. But as long as these services are provided regardless of the recipient's religion, there is no reason for churches not to participate. In one successful instance, a coalition of religious and secular voluntary agencies administered $90 million in emergency federal aid for the hungry and homeless in 1983.

Religious institutions, along with families, neighborhoods and other forms of voluntary associations are examples of mediating structures which help the individual cope with the larger institutions of society, such as big government and big business. These structures serve a variety of public purposes and may even be effective vehicles for delivering government-funded social services.

VI. GOVERNMENT INSTITUTIONS MUST SHOW NEITHER OFFICIAL APPROVAL NOR DISAPPROVAL OF RELIGION.

This is a restatement of the principle of government neutrality toward religion, applied to government corporate action. Justice Sandra Day

O'Connor restated this principle well in a recent opinion:

"The Establishment Clause prohibits government from making adherence to a religion in any way relevant to a person's standing in the political community. Government can run afoul of that prohibition in two principal ways. One is excessive entanglement with religious institutions....The second and more direct infringement is government endorsements or disapproval of religion. Endorsement sends a message to non-adherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community. Disapproval sends the opposite message."

VII. THERE CAN BE NO "RELIGIOUS TEST" FOR PUBLIC OFFICE.

Article VI, Section 3, of the Constitution declares that "no religious test shall ever be required as a qualification to any office or public trust under the United States."

But that requirement has come under attack in subtle and not so subtle ways in recent years — including the advice from White House public liaison officer Carolyn Sundseth that Christians pray that Reagan's advisers "get saved or get out."

The ban on religious tests is also violated by groups like the National Christian Action Coalition and the Christian Voice when they label a candidate's position on issues as "Christian," "non-Christian" or "godless," especially on such issues as the creation of a separate Cabinet-level Department of Education or upgrading diplomatic relations with the People's Republic of China. Religious lobbies like Impact, Network and Bread for the World have long managed to take positions and issue voting records without saying or implying that those with low scores are less "Christian" or less "religious."

On the question of a religious test, President Reagan steps over the line of what is acceptable. In his March 6, 1984, address to the National Association of Evangelicals, he again contrasted the atheistic Soviet Union with the believing United States, and said "We will never stop praying that the (Soviet) leaders, like so many of their own people, might come to know the liberating nature of faith in God." In declaring that only political leaders who believe in God are acceptable, the president disqualifies nonbelievers in this country.

VIII. ONCE INSIDE THE POLITICAL ARENA, EVERYONE MUST PLAY BY THE SAME RULES.

This means simply telling the truth, refraining from using scare or smear tactics, relying on persuasion rather than coercion and, in general, maintaining a sense of civility. It means, as Sen. Edward Kennedy (D-Mass.) said at Jerry Falwell's Liberty Baptist College, that "people are not 'sexist' because they stand against abortion; they are not 'murderers' because they believe in free choice."

Cardinal Bernardin put it this way: "We should maintain and clearly articulate our religious convictions, but also maintain our civil courtesy. We should be vigourous in stating a case and attentive in hearing another's case; we should test everyone's logic, but not question his or her motives."

Another example of playing by the same rules is using a single standard to judge all participants in the process: for example, there's a double standard at work when liberals praise the Catholic bishops for entering the public debate on nuclear arms, but criticize them for entering the public debate on abortion. The bishops have a right to be in both debates; their arguments in each case are subject to the same level of scrutiny based on their merits.

IX. PUBLIC OFFICIALS HAVE EVERY RIGHT TO EXPRESS THEIR PRIVATE PIETY, AND NO RIGHT AT ALL TO USE THEIR OFFICE TO PROSELYTIZE OTHERS.

While O'Connor's comment above was made within the context of direct government action, it also applies in principle to the rhetoric used by officeholders. To sum this up in the language of ecumenical dialogues, "Witness, Yes; Proselytization, No."

Americans expect, and even like, a certain amount of piety in their public officials, and national leaders frequently call for God's help in times of crisis. This is an expression of a non-denominational, non-threatening civil religion. Americans aren't threatened by a politician's private beliefs; non-Baptists weren't offended when Jimmy Carter taught at a Southern Baptist Sunday school while president. But a public official who asks people to believe in the Bible or to do something because it is commanded by "Our Lord, Jesus Christ" has stepped out of bounds.

President Reagan's frequent use of "we" to refer to Christians and "they" to refer to everyone else sends a message to "non-adherents." In fact, his identification with a narrow, fundamentalist view of Christianity sends a message that even Christians who don't share that view are "non-adherents."

X. NO ONE HAS THE RIGHT TO CLAIM TO SPEAK FOR GOD.

The rhetoric of the Christian Right is full of references to America as a "chosen nation" or "the New Israel" and to "God's will." For example, Jerry Falwell has said, "God has called me to take action. I have a divine mandate to go right into the halls of Congress and fight for laws that will save America" and "Our battle is not with human beings, our battle is with Satan himself. The real conflict is between light and darkness, the kingdom of Satan and the Kingdom of the Lord Jesus Christ."

President Reagan has tried to sidestep the issue by saying "I've said that we must be cautious in claiming that God is on our side. I think the real question we must answer is, are we on His side?" This statement is merely a bit of casuistry which still conveys the belief that the speaker is, in fact, "on His side."

The question of claiming to speak for God also comes up when religious leaders endorse political candidates. A minister has the same freedom as anyone else to endorse a candidate as an individual, but it's unacceptable to imply that an endorsement speaks for all Christians or reflects "God's will."

The Christian Right and its supporters argue that religion is an integral part of society and that both believers and religious institutions have certain rights. They do — but they also have responsibilities, including playing by the rules.

The First Amendment is the basis of so many of our liberties, that what begins as an assault upon religious freedom ends up as an assault upon all our freedoms. In recent years, political extremists have claimed a religious justification for censoring school textbooks, purging library bookshelves, and restricting students' rights to learn, teachers' rights to teach, and every citizen's right to speak freely. And that's only the beginning. In this century, we have learned of the horrors that can begin with book-burning and implicit attacks uopn minority religion. Lurking behind the assaults upon the First Amendment is an attack upon the America we love — a melting pot; it is a rich mosaic of all the world's peoples, cultures, and faiths. From this diverse population is drawn the strength and hope of our country.

For nearly 200 years the First Amendment has safeguarded the basic rights and liberties of the American people. Under its wise provisions both personal liberty and a rich diversity of religious beliefs have flourished. It is as precious to our future as it has been to our past. The way of the First Amendment remains the American Way.

Senator HATCH. Thank you, Congressman Buchanan.

I have appreciated the testimony of everybody here today and we will make sure that all statements will go into the record as though fully delivered. Let us just ask a few questions to you panel members.

I would appreciate it if you could keep your remarks brief, but make what you feel are significant remarks.

Generally speaking, what can a government or, in particular, our Government, do in advance that does not violate a person's religious freedom rights?

Dr. Kennedy.

Dr. KENNEDY. James Madison said that the Federal Government does not have the shadow of a pretext to intermeddle in religion, and I believe that it was the intention of the framers of our Constitution that the Federal Government be kept out of religion. And that would include, I believe, the courts as well as the Congress.

Now, what we have had is the Congress has abstained from passing laws but the courts have entered into the legislative field and have, in effect, legislated against religion by their various decisions.

As you know, 8 of the 13 States that founded this country had established religion when the constitution was passed and it was not the intention of the first amendment to in any way restrict religion. The real purpose I believe of the first amendment was not the separation of church and State but rather the separation of the State from the church. And there is a vital difference between those two concepts. As you know, the Bill of Rights, the first ten amendments were demanded by the people because they were afraid of the powers newly bestowed upon the Federal Government and they wanted to protect the rights of the people. Therefore, they were one-way streets. They placed shackles upon the hands of the Federal Government and restrained them from restricting the liberties of the people, principally the No. 1 right that they protected was the freedom of religion, the first part of the first amendment.

Now, what has happened is that the shackles of that first amendment have been taken off of the hands of the Government and have been placed upon the church. And I would call into testimony the fact that in the last 5 or 10 years, 98 percent of the time that you hear the statement, the separation of church and State, what was being discussed was not what the Federal Congress can do or not do, which is what the first amendment talks about, but it was always what the church can do or cannot do, what a church school can do or cannot do, what Christian clergymen can do or not do or even what Christians can do or cannot do.

So we have now totally reversed the intention of the first amendment. The original intention was to restrict the Federal Government. It has now been turned around so it is continually being used to restrict the rights of religious people and it is being used diametrically opposite to its original intention.

I do not want to do away with the first amendment. I would like to do away with these ridiculous and ludicrous interpretations of it that are totally anithetical to its original intention.

Senator HATCH. Thank you.

Dr. Titus.

Dr. Titus. Article IV of the U.S. Constitution says that the Constitution is the supreme law of the land. It does not say that the opinions of the U.S. Supreme Court are the supreme law of the land. President Lincoln learned that lesson well in his debates with Douglas over the *Dred Scott* issue. He did not accept the *Dred Scott* decision of the U.S. Supreme Court as the supreme law of the land. Rather he went to the Constitution itself, as a candidate for office and then later as President of the United States, to decide for himself what his constitutional duty was to be.

Too often, I believe, in this Senate, the House of Representatives, and also in the executive offices, Members of the bodies believe that they are bound in their legislative capacity by the opinions of the Supreme Court even when they disagree with them. I believe that you have a constitutional right as well as a constitutional responsibility to examine the text of the Constitution, to look at its language, to decide for yourself rather than to just simply think that the Supreme Court has decided for you as to the meaning of such precious liberties as the first amendment. Let me give you an example.

In the first amendment, the word "religion," if you go back into history, means the duties that we owe uniquely to our Creator as contrasted to those duties that are owed to Caesar. You do not see that concept in any Supreme Court cases today. They simply ignore such language.

Therefore, they are not paying attention to the specific language nor the intent of the Constitution. You need not act that way.

I would suggest to you that if you go back you will find guidance from such men as James Madison and Thomas Jefferson to deal with the questions that you have before you.

Senator Hatch. Dr. Hill.

Dr. Hill. I would say, No. 1, do not be afraid of the religious community. The heartbeat of America, the thing that is holding us together at the grassroot level, with all due respect to you gentlemen, is not the Congress of the United States. It is what is happening up and down the streets and on the corners to various religious activities. It is the constant encouragement of the preacher, the rabbi, the priest of telling people to go the right, to keep the hope, to be loyal to God and country. And there is some kind of fear that is loose in this country that the aggressive religion push that is going on is somehow deterimental to this country and thus prayer groups like in Pasadena, neighbors who just wanted to gather and have prayer together, were taken to court and told that they could not even have neighborhood prayer meetings. And yet that same house could have a dance all night long and there is no law against that at all.

So do not be afraid of what religion is doing.

Second, do not let government through all of its various subcommittees and bureaucracies and departments and agencies, including the Internal Revenue, build all of these fences to progress that we can make as religious people because they come in and tell us what we must do as nonprofit corporations. They do not even consider the fact that we are of God.

Senator Hatch. Congressman Buchanan.

Mr. **Buchanan**. I think government has the right and, indeed, the responsibility to protect the basic individual rights and liberties of American citizens and to ask American citizens that they comply with the reasonable requirements of law. It seems to me the Government can do that whether or not those individuals have on a religious cloak. It seems to me that where an entity in the name of religion is violative of either law or the rights of American citizens, then the Government can legitimately act in such case.

Senator **Hatch**. Let me ask each of you: Do you feel that religious freedom rights are afforded the same degree of protection by the enforcement agencies of government as other civil rights, ranging from freedom from race and sex discrimination, for instance?

Shall we start with you again, Dr. Kennedy, and then go across.

Do you understand my question? We raise—Congressman Buchanan raised the issue of race discrimination, now of sex discrimination, we have other rights that are held inviolative in this country.

Do you think that religious freedom rights are elevated to the same status?

Dr. **Kennedy**. No, I do not. I believe that the attention of the country has been directed at various times in its history to certain problems that the society has raised: The problem of slavery, 100 years ago, the problem of discrimination in recent decades.

That same sort of attention has not been focused upon religious rights and perhaps today is a very signal turning point in that failure to direct the attention of our country to this problem.

I think that the number of cases of prosecution and persecution that have been described today bear testimony to the fact that religious rights of citizens are being trampled in the mud in many places in our country. Things which were unthought of a decade ago are taking place, such as the horrors that we heard about in Nebraska and in California and other places in this Nation.

But I am optimistic that with such hearings as these and with the opportunity of airing these problems before the American people—I believe in the American system—that justice and freedom for all will prevail. And I think one of the greatest dangers is the suppression of the expression of religious views on religious liberty which has taken place too often in our country and which this is a notable exception to today. I think that the outcome will be salutory.

Senator **Hatch**. Thank you.

Dr. Titus.

Dr. **Titus**. I believe that one of the fundamental errors today in the question of protection of religious freedom is viewing religion as a narrow claim. What I mean by that is that so often people think that churches have a claim that other people do not have, because they do not identify with a church. But religion is much broader than churches. It is even much broader than people who even identify themselves as religious people.

Let me give you an example. When Thomas Jefferson spoke against tax-supported schools in Virginia, he was not just concerned about government control of opinions about who Jesus Christ is, but he was also concerned about government control of what good physics is or what good mathematics is. That is, the opinions and belief of men, whether they are identified as religious subject matters or nonreligious subject matters were considered to be religion, that is the duty that we owe to our Creator.

What we think about mathematics, what we think about science is just as much a duty to our Creator as what we think about Jesus Christ, whether he is or is not the Son of God. They believed that the minds and hearts of the people, and therefore teaching, education, was considered to be religion.

If we would get back to the original intent of our Fathers and understand religion from the way they intended it to mean, then I think it would have a much broader-based appeal and then I think a lot more people would be concerned about religious freedom. And it would be elevated where it should be.

Sentor HATCH. Dr. Hill.

Dr. HILL. I think that 25 years ago I was in this building going up and down the halls with our civil rights needs and the problems of civil rights. I think 25 years later we still have civil rights problems, but now it is our religious rights.

No, I do not think the same emphasis is being placed because there is an assumption abroad in the land that we are always going to have proper religious rights in this country. There is the assumption on the part of a lot of elected officials. It will always be there. It is just like the assumption that the plantation owner had, that the slaves were happy and that we did not even have to bother about them. And there are a lot of people who believe that religious freedom in the United States, with the exception of one, hither, thither, yon, everything is all right.

I think our presence here today, coming from such a broad spectrum and altogether suggests that all is not well and we certainly hope we can convince those in Congress that all is not well. And I think you can look at the voting rights, I mean the voting in recent years, things that matter in terms of civil rights for the most part have been passed.

Things that have mattered in religious freedom that the religious community has asked, have been somewhat bogged down.

So I do not think the same emphasis has been placed but I think that it does need to be placed here.

Sentor HATCH. Thank you, doctor.

Congressman Buchanan.

Mr. BUCHANAN. Well, Mr. Chairman, religious liberty is a cornerstone of all our liberties and the protection of freedom of conscience, free exercise is certainly a matter of premier importance and of first importance.

It does seem to me that while real and legitimate problems have been raised here, there has been such an emphasis on the negative that we may overlook the fact that religious liberty does flourish and has flourished in the United States under the protections of the first amendment. And that perhaps to a unique degree among the nations of earth, of which I am aware, that is the case in our country and therefore the answer would be yes, religious liberty is of first importance, the protections of freedom of conscience, expression are of first importance. But I think the first amendment track record overall is quite good.

Sentor HATCH. Thank you.

Senator Leahy, I will be happly to turn to you at any time here.

Senator LEAHY. Mr. Chairman, you are covering all of the issues I would want to, and doing it better than I would.

I yield my time to you.

Sentor HATCH. Well, if I could just ask one more question of the four of you. And let us start with you, Congressman Buchanan.

Do you feel that the *Nebraska* cases, the *Reverend Moon's* case, the *Bob Jones* case, the tax and other issues raised by Reverend Bergstrom here today are indicative of any trend towards unconstitutional intrusions into the affairs of churches by the Government. And, if you do, how would you describe that particular trend?

Congressman Buchanan?

Mr. BUCHANAN. I doubt my own competence to answer in the cases discussed, Mr. Chairman.

I would say that you do well to look hard at any possible Government intrusion into religious liberty.

Again, it seems to me that the experience of our society and the preponderance of the experience of our society is in the opposite direction from that. And I suspect that there is not serious violation of religious liberty in the United States nor a trend in that direction.

Senator HATCH. Could you wait just one second, Reverend Hill, before we call you on.

We do have Reverend Paul Weaver of Vermont here. Reverend Weaver, where are you?

Senator LEAHY. He is right behind you, Mr. Chairman.

Senator HATCH. Why do you not go take your place at the table. Senator Leahy has asked me if we could take just some short testimony from Reverend Weaver as well before we end this today and we still give him a few minutes to do that.

Senator LEAHY. Mr. Chairman, I——

Senator HATCH. There is a seat over there.

Senator LEAHY. Mr. Chairman, I would note I greatly appreciate your courtesy. I know there have been hundreds of people who have asked to testify here today. And Reverend Weaver, who is well respected in the State of Vermont, has asked personally if he could testify—primarily because of the events in Vermont that have been alluded by a number of people over this past week. And I know that you are making an extraordinary effort to bring him into this. And I just want to express my appreciation to you.

Senator HATCH. We are very happy to have you, Reverend Weaver. I am just so pressured for time, but I do want to do this for Senator Leahy and for me. But we will get to you last.

But if you could answer that question. These cases, these instances that have been raised today, are they indicative of any unconstitutional trend or intrusions by the Government into the affairs of our churches; and, if so, how would you describe that trend and what shall we do about it?

Dr. HILL. Well, I want to describe the trend first.

I think that there is antagonism on the part of governmental agencies towards the church. I think this antagonism is in the Internal Revenue, I think this antagonism for instance in my own community is in the Department of Building and Safety, for instance, I can give you a good illustration.

The Department of Redevelopment of the Downtown Los Angeles—redeveloped Los Angeles, and I used to be a member of the city planning and zoning, redeveloped Los Angeies to accommodate 50,000 citizens downtown. But they made sure no more churches. And as the other churches are closed down and they are closing them down through code enforcements, no more replacements.

People, but no churches, is kind of throughout the country. There is antagonism against the church, against religious freedom now. That might not be an international movement led on natinally by Senators and what have you, that we are going to stop religious freedom, but I think as the church has become the church, in my own area, in civil rights, as Dr. Falwell and others have played a great role in the community, there is antagonism in Government all the way down to the city councils and I think that that does exist. And wherever problems can be brought up, they are brought up. We fight them daily. I happen to be vice president of the National Baptist Convention that represents 7 million people and we do have day-to-day antagonistic problems from governmental agencies who would just as soon rebuild the city and leave out the churches.

Senator HATCH. Dr. Titus?

Dr. TITUS. I think these cases and particularly the *Nebraska* case, and the case involving Bob Jones are indicative of the example of the breakdown between the jurisdictional wall between the authority of the civil government and the authority of God. If we do not have a legal system that acknowledges a sovereign God that rules us before we come into a society, such as was the faith of our forefathers, then religion is going to be an invention of the State, or it is going to be an invention of people who are in authority. Rights once inalienable become merely civil and what we have, I believe, in example after example today, and I think in *Nebraska* and the *Jones* cases are good examples, is that when you have people who think that they have total authority over a particular area, such as education, then in good faith, believing that they have a compelling State interest, they can force people to conform to what they think is good educational policy or whatever other policy that they happen to enforce. As long as they do not believe that religion is an inalienable right granted by creator God, then they are going to substitute their own judgments for what they think is right and good for society.

We must go back to the faith of our fathers if we are going to have a religious freedom that is fixed and forever in a way to keep good faith bureaucrats from trying to impose their views on the rest of us.

Senator HATCH. Dr. Kennedy.

Dr. KENNEDY. I believe that there is very definitely a trend that I alluded to earlier, and I believe that in the last half century this has begun in our educational institutions with increasing secularization. What is now commonly called secular humanism, it used to be called simply infidelity by the Founding Fathers of our country, it is a disbelief in any sovereign God who has overriding authority over the State and over all individual lives.

I think that this view that has pervaded our educational institutions has spread from there to our media where it has been greatly strengthened, and it has been spread abroad throughout our country. Now people educated in that way, indoctrinated through our media, are in our bureaucracies, they are in our Government, they are the people that Dr. Hill has had to deal with and others in our churches. And I think that this secularism bodes very ill for the future of religious freedom in this country.

It is a fact that this Nation founded by predominantly Christian people provided for the world the greatest amount of religious liberty that had or has ever existed anywhere in the world before. There is no other nation in the world that has allowed the degree of religious liberty that was allowed by Christian America established on these shores. And yet today we find in secular humanisn an increasingly intolerant alien religion that is intolerant of any other religious view expressing its opinion in the public sphere, and it has done all it can to repress and suppress the expression of any other religious viewpoint in our schools, in our Government, anywhere. Efforts to take away the motto of in God we trust, suits against the astronauts, for reading the Bible, suits against prayer, taking away the Ten Commandments, all this type of thing, pushed by people who are unbelievers, who are atheists, who are secular humanists, whatever you want to designate them as, demonstrate a very intolerant system. And I think that unless the American people realize that this Christian system allowed a degree of religious liberty never before seen, where Tom Paine and Robert Ingersoll and Madeline Murray O'Hare could express their views on any platform in America, on national television and in the press, and everywhere else, where any person could come, whether it be a Buddhist or a Hindu, could proselytize—which is against the law in many other countries of the world today—tremendous religious freedom in Christian America.

I believe that if we see the complete success of the secularist view of life, you will find a continual corresponding diminution of the amount of religious freedom that is allowed in our country. And I believe that under the guise of neutrality or of secularism, and without letting people know that this is a religion, we have virtually in this country today an established religion in America. It is the religion of secular humanism. It is established in the sense that it is taught in virtually every public school in America today, and its tenets are upheld by the courts of this country. Evolution, one of the principal pillars of secular humanism is taught in virtually every school in America, while creationism may not be taught by court edict, and on and on you can go with other things. Their amoral ethical system is taught, their world view in taught, and so this country is being indoctrinated in another religion which has been established in this country. And I believe that unless the American people see this larger view of what is happening, they are not going to understand the whys and the wherefores of the particular cases that we are facing, and I think that America needs to get back to its foundations, to the views of the founders of this country as to what America was originally founded upon if there is going to be any hope of continuing religious freedom in this Nation.

Thank you.

Senator **Hatch**. Now, our last witness here on this panel is Reverend Paul Weaver of Vermont.

If you could conclude in just a few minutes, I would appreciate it.

STATEMENT OF REV. PAUL WEAVER, TRINITY BAPTIST CHURCH, ROUTE 2-A, WILLISTON, VT

Reverend **Weaver**. Thank you, Senator Hatch, for the privilege.

For 35 years I spent my life in parsonages. My dad was a pastor. Now I have been one for 14 years. I have watched the change in attitude toward religion, the relationship between Government and the church break down. In the fifties, I saw a friendly relationship, neutralized perhaps in the sixties and seventies, becoming in many ways an adversary relationship in the eighties, which is to my dismay.

We are law-abiding citizens. We love this country as much as anyone. I find myself on a July 4th now standing and watching the parade of our little town and wondering how long our freedoms will hold out. Where as a young child, I stood there with great hope for the future in these matters.

There indeed is religious intolerance in Government circles today. We have been fortunate in our State to have a good State supreme court and legislature who have dealt successfully with two of our problems and put them to rest because there were some brave individuals who were willing to deal with the issues as they really were; that religious liberty issues were involved with educational matters. But what distresses me most I suppose is the events of this past weekend in our own State, and by Executive order and promulgation, a group of 90 State troopers and 50 social workers descended upon one of our small towns. In that town was a church that has been described by many as cultic, one that certainly I do not hold beliefs in common with, but people who have precious religious guarantees under our Government. And they came into the town and they came into the homes, they took 112 children. Their hope and purpose was to detain the children for 3 days to investigate the possibilities of child abuse, allegations that have been made for a number of years, but none that have been proven, none that have held up in courts, that have held up with records. They were going to detain 112 children for 3 days.

Fortunately, the judge would not allow it, Judge Frank Mahady would not allow it. They had a Burke Mountain school set aside to take these young people, psychiatrists there, ready, medical doctors there ready to examine these children and to take them perhaps permanently away from their parents. These children were removed from their homes with breakfast muffins in their mouths. The wives were wakened up with flashlights in the privacy of their own beds and their homes, the men were taken off without any concern over the care of their property and without any general concern I believe for their religious liberty.

For one of the first times, I have seen the religious community and adversarial organizations within our State come together in agreement on this particular thing. When you see the ACLU and the Christian school group get together on the last three issues that have occurred in the State of Vermont, you know there must be something going on, there must be some religious liberty problems. When you see the conservative and liberal churches alike getting into the act together, whereas for so much time there was so much sleepiness on the part of many church leaders, you know something is happening to our country.

But, most of all, I think from a personal point of view, I do not try to be an expert here, there is that internal turmoil that is going on in the hearts and minds of many of our good people who pay their bills, who pay their taxes, who love this country, who are raising children to be solid citizens, a fear of what the future really holds in light of some of the events that have occurred.

I thank you for this opportunity.

Senator **Hatch**. Well, thank you.

I want to—let me turn to Senator Leahy.

Senator **Leahy**. Thank you, Mr. Chairman.

In my opening statement, I went off the prepared text, I referred to the matter that Reverend Weaver has referred to in saying that I would hope that both our system of constitutional government and our belief in the first amendment would allow that matter to be straightened out.

Mr. Chairman, again I appreciate and I am indebted to you for your courtesy in allowing Reverend Weaver to testify. I thought it was a matter of significant importance and he was concerned enough to make a special trip down here. He is not a man who takes these issues lightly. He and I thought that it was important that he speak.

In part of your testimony, Dr. Hill, you said do not fear religion, and I agree with you. I hope that we would never have a time in the United States of America where we would fear religion. But those who represent religion, whatever it might be, should never allow their belief and their faith that they have found the one truth to allow or compel them to seek conformity from those who they feel have not found the truth.

In other words, if we feel that we have found the truth, let us never allow that belief, that faith, no matter how strongly held, to bring us to require others, or force them to conform to what we have found as a truth. And I am not suggesting, sir, that you meant that at all. I have said throughout my life as a law student, as a lawyer, my public career as a prosecutor, as a U.S. Senator, that the most important part of our Constitution is the first amendment. Because it guarantees the freedom of religion and it guarantees the freedom of speech. And any country that will guarantee both those—and truly guarantee them—will never fail, will never fail.

The freedom of religion means freedom to all, not just those who agree with our own religious beliefs. If one's beliefs are true and strong, they are going to survive without the enforced conformity to other's beliefs. Whether they are forced through peer pressure, economic pressure, or so on. If our own beliefs are true and strong, they are going to survive—they are going to survive. Let us never forget that. Never let us seek enforced conformity, and let us, above all else in this country, uphold the first amendment.

Thank you, Mr. Chairman.

Senator **Hatch**. Well, thank you.

We have had, it seems to me, a number of very eloquent remarks made here this day, not the least of which are the remarks of my dear friend and colleague, Senator Leahy here at the conclusion of this hearing.

I think also one of the things that has dawned on me repeatedly throughout this hearing happens to be that we all have a obligation to be more tolerant. All of us have an obligation to combine together in the best interests of this country. I have never seen an issue since I have been in the U.S. Senate which has brought more diverse groups of people together then this particular issue, than this particualr hearing. Some of the most intolerant statements made in our society over the last 8 years, while I have been a Member of the U.S. Senate, have been made ocassionally by religious leaders against other religious leaders I think that is an important aspect too that we who believe in religion have tolerance for the viewpoints and feelings of others who also believe in religion, albeit not our own.

I think that what has happened here today is that we have had people from diverse religious points of view come together in the best interests of this country and in the best interest of the first amendment.

I might add that I might be remiss if I do not agree with Senator Leahy that the first amendment really is the cornerstone of all of the privileges that some of us take for granted each day, and which it takes good religious leaders to articulate so that we do not take them for granted.

I think we have had some wonderful, wonderful testimony here today from our constitutional experts to our religious leaders. Everybody who has testified, it seems to me, has added something to this hearing. And I just want to personally compliment all of you. I hope that in some of these cases that we will get reason in American, that we will become more reasonable in America.

I really hate to see where there are legitimate disputes that any religious leader is placed in prison. I agree with Reverend Bergstrom that if religious leaders commit heinous crimes or major criminal crimes they should have to pay just like anybody else. But where are legitimate disputes and where the matters arise out of the expression of religious beliefs, regardless of the differences, I hate to see this type of treatment accorded to any citizen and any minister in our society, or any priest.

I am extremely impressed with what we heard here today. I think we will probably need to continue these hearings. This is a time in our country's life where it is at a threshold and, I might add, a crossroads of where we go from here.

I would like to see religious freedom expanded, preserved, cherished, and sanctified in our society more than it has been over the intervening number of decades. And I think to that extent the witnesses here today have certainly helped. And I just hope that we can hear from all of you as to what other types of hearings you would like to hear in this area. I would like to be able to help provide them so that all of us will think a little more clearly, a little more significantly, a little more sincerely about these very profound religious concepts, very profound religious considerations that really we need to think of continually if we want to keep this country the greatest country in the world and the freest of all nations.

With that, we will recess until further notice.

Thank you all for being here. [Applause.]

[Whereupon, at 1:42 p.m., the subcommittee adjourned, subject to the call of the Chair.]

APPENDIX

ADDITIONAL SUBMISSIONS FOR THE RECORD

SUPPLEMENTAL SUBMISSIONS OF SUN MYUNG MOON

Casey, Scott & Canfield, P.C.
Attorneys at Law

420 Washington Building
1435 G Street, N.W.
Washington, D.C. 20005
(202) 783-6490

August 13, 1984

Honorable Orrin G. Hatch
Subcommittee on the Constitution
Committee on the Judiciary
of the Senate of the United States
Russell Building
Suite 135
United States Senate
Washington, D.C.

Dear Mr. Chairman:

The enclosed analysis of the record of the trial of Reverend Sun Myung Moon is submitted on behalf of the Unification Church of America in order to address various issues raised during the June 26, 1984, hearings of the Subcommittee concerning Religious Liberty in the United States.

Recently, it has been suggested that Reverend Moon's testimony at your hearing "totally misstated what was involved in the prosecution." We believe that the enclosed memorandum presents a fair and objective description of what happened in Reverend Moon's prosecution, using quotations from seven thousand pages of trial transcripts.

We appreciate this opportunity to contribute to consideration of an issue most important to the majority of Americans -- religious freedom under the U.S. Constitution. We also are thankful for the very helpful and thoughtful consideration extended by your staff.

Sincerely,

Edward F. Canfield

Edward F. Canfield

EFC:rlw
Enclosure

cc: Dee Benson, Esq.
Special Counsel

Oversight Hearing on Religious Liberty
Before the Subcommittee on the Constitution
United States Senate Committee on the Judiciary

* * *

SUPPLEMENTAL COMMENTS ON BEHALF OF THE UNIFICATION CHURCH OF AMERICA

Edward F. Canfield
Robert E. Heggestad
Mark S. Weiss

CASEY, SCOTT & CANFIELD, P.C.
1435 G Street, N.W.
Suite 420
Washington, D.C. 20005
(202) 783-6490

Counsel For the Unification
Church of America

August 15, 1984

TABLE OF CONTENTS

Page

INTRODUCTION 1

BACKGROUND AND SUMMARY 3

A. Reverend Moon Was Investigated, Not Simply As a Taxpayer, But Because He Was the Head of the Unification Church 8

B. The Highly Prejudicial Publicity Surrounding the Unification Church and Reverend Moon Precluded Any Possibility That a Panel of Jurors Free From Bias or Prejudice Could be Selected 12

1. The Jury Selection Process Confirmed That Prospective Jurors Had Been Saturated With Negative Information Concerning Reverend Moon and the Unification Church 14

2. The Court's Decision That Jurors Did Not Have to Accept the Unification Church As a "Real" Religion Precluded An Objective Consideration of the Tax Issues in This Case 34

3. The Court Ignored Clear and Pervasive Bias Against Reverend Moon and the Unification Church in Denying Reverend Moon's Final Motion for a Bench Trial 37

C. The Government's Prosecution of This Case on the Basis of Whether the Unification Church Was a True Religion, Deprived Reverend Moon of the Opportunity For a Fair Trial 39

  1. The Government Consistently Portrayed the Unification Church as a Mere Business, and Reverend Moon as a Businessman, in its Presentation to the Jury 41

  2. The Government Attempted to Discredit Church Members Who Appeared to Testify By Focusing its Questions Upon the Issue of "Brainwashing" 51

  3. The Government Introduced Irrelevant and Highly Prejudicial Evidence in Order to Support the Vague and General Conspiracy Alleged in the Indictment. 65

  4. The Government Convicted Reverend Moon on the Novel Theory That "If It Is Moon's Money and He Used All of It For the Church That Doesn't Make It Not His Money" 72

CONCLUSION 77

Oversight Hearing on Religious Liberty
Before the Subcommittee on the Constitution
United States Senate Committee on the Judiciary

* * *

SUPPLEMENTAL COMMENTS ON BEHALF OF THE UNIFICATION CHURCH OF AMERICA

INTRODUCTION

This document is presented to the Subcommittee in response to an invitation extended by the Chairman, Senator Orrin G. Hatch, at the conclusion of its hearings concerning Current Issues in Religious Liberty on June 26, 1984.

Reverend Sun Myung Moon ("Reverend Moon") the spiritual leader of the worldwide Unification Church movement and the Unification Church of America, was convicted of filing false Federal income tax returns on July 16, 1982, in the United States District Court for the Southern District of New York. This conviction followed a six-week trial, during which the Government sought to buttress its vague and novel theories of taxability with "evidence" which maligned and generally cast aspersion upon the religious tenets and practices of the Unification Church, as well as its members and Reverend Moon. In essence, the case against Reverend Moon is, and has been since its inception, an indictment and trial of the Unification Church.

These comments are submitted as a supplement to the oral testimony given by Reverend Moon before the Subcommittee, and are designed in part to address questions raised by certain members of the Subcommittee with respect to the fundamental fairness of the prosecution against Reverend Moon. No attempt has been made herein to justify or criticize specific legal theories asserted during the course of the various proceedings in this case. This document, rather, attempts to portray the full tenor of the prosecution, from the indictment of Reverend Moon to the time of his incarceration, through spontaneous statements of the Court, the prosecutors and the jurors. These remarks have not been culled selectively for the purpose of creating a predetermined impression. In all cases, they are arranged as fairly as possible, in order to demonstrate individual attitudes and reactions, and to shed light upon the vital issues of religious freedom, Constitutional right and proper functioning of the judicial system, which are the concern of this Subcommittee.

Against this background, an objective review of the record herein leads to the conclusion that the purpose of the investigation and trial of Reverend Moon was not, as suggested by the Government [1] and the Court, [2] simply to determine "whether or not certain property belonged to defendant Moon and whether he should have declared them as his and paid taxes on them." The purpose of this prosecution, rather, was to determine "whether or not the Unification Church is a true religion or a cult and whether or not it has been beneficial to America." [3]

BACKGROUND AND SUMMARY

The investigation of Reverend Moon began with a letter dated January 9, 1976, from Senator Robert Dole, a member of the Senate Committee responsible for the oversight of the Internal Revenue Service ("IRS"), to Mr. Donald Alexander, Commissioner of the Internal Revenue Service. In this letter, Senator Dole requested that the IRS begin an investigation of the tax exempt status of the Unification Church. He expressed concern over "mind control techniques" allegedly employed by the Church, as well as the validity of the Church's fundraising activities and Reverend Moon's "affluent life [style]," which he characterized as beyond that which "could be reasonably expected for any clergyman."

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[1] TR. 2194. Citations to the record as reprinted in the appendix submitted to the Court of Appeals will be denoted as follows: Citations to pre-trial transcript, "P__"; to trial transcript, "TR. __"; to post-trial transcript, "S__"; to Government Exhibits "GX. __"; and to Defendants' Exhibits, "DX. __".

[2] TR. 1759.

[3] *See*, TR. 1758. The Court acknowledged after jury selection and prior to trial that because of the jurors' negative attitudes, if these were the issues to be tried "the situation would be pretty critical."

Subsequent to his indictment for tax evasion and conspiracy, Reverend Moon publicly questioned the Government's motives for prosecuting him. One notable speech, made on October 22, 1981 in Foley Square, outside of the District Court building in New York City, was reprinted in the New York Times. This speech was cited by the Government as the basis for its later refusal to accede to Reverend Moon's request for a bench trial. Ignoring clear evidence that it would be impossible to find a non-biased jury, the Government insisted that Reverend Moon's public criticism of the Government's motives made a jury trial necessary in order to preserve the "appearance of fairness." Even the Court acknowledged, following several days of voir dire examination of prospective jurors however, that a non-jury trial would in fact be fairer, but concluded that it could not overrule the Government's refusal to consent to a bench trial.

Reverend Moon's concerns regarding jury bias were confirmed during the jury selection process. The Court's examination of a panel of almost 200 prospective jurors revealed that a majority of those questioned [4/] had in fact been exposed to prejudicial publicity concerning the religious tenets and practices of the Unification Church and its leader, Reverend Moon. Many of these prospective jurors acknowledged that they harbored strong negative feelings about the Unification Church, its members, and Reverend Moon in particular. The preconceptions and prejudices of these prospective jurors focused primarily on the belief that the Unification Church was merely a cult and not a bona fide religion, that the Unification Church and Reverend Moon were involved primarily in business activities rather than religious endeavors, that the Church had expanded its membership by "brainwashing" young people, and that young members of the Church were compelled to solicit funds in order to accomodate the "luxurious" lifestyle of Reverend Moon.

Despite the Government's awareness of widespread prejudice against Reverend Moon and the Unification Church, and contrary to the prosecution's assurance that Reverend Moon would not be tried in a religious context, the Government, from the outset of the proceedings against

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[4/] From the 200 prospective jurors impaneled, 63 were interviewed to select the final jury panel (see, TR. 300-1698) and 17 were interviewed to select the six alternate jurors (see, TR. 1699-1700, 1773-1900, 1933-2121).

Reverend Moon, attempted to exploit the known preconceptions and biases of the jurors who had been selected. The Government's efforts to introduce highly prejudicial and irrelevant evidence continued throughout the trial and were for the most part successful. The Court, acknowledging that this evidence had no relevance to the substantive charges, nevertheless permitted the evidence to be admitted, accepting the Government's argument that such evidence was necessary to support the general and vague conspiracy alleged in the indictment.

The Government's efforts to persecute and silence Reverend Moon and the Unification Church did not end with Reverend Moon's conviction. In support of its opposition to a recent request for a reduction in Reverend Moon's prison sentence, the Government provided the Court with a copy of Reverend Moon's prepared testimony before this Subcommittee on June 26, 1984. In that Opposition, the Government stated:

> That campaign of distortion continues to this day. On June 26, 1984 defendant Moon appeared and testified, in English, before the Subcommittee on the Constitution of the Judiciary Committee, United States Senate. . . . In his testimony, a copy of which was obtained from the office of United States Senator Orrin G. Hatch, Chairman of the Subcommittee, and is annexed as Exhibit A to this memorandum, Moon repeated the baseless charge that his prosecution in this case amounts to persecution. . . . For the Court to grant this motion in the face of the defendant's continuing campaign of distortion and unfounded accusation would be interpreted as an endorsement of their baseless and discredited claims. (Emphasis added.)

The Court subsequently refused to reduce Reverend Moon's prison sentence.

Just as Reverend Moon's public criticism of the Government's motives served as the basis for the Government's denial of his request for a bench trial in order to preserve the "appearance of fairness," Reverend Moon's public statements before this Subcommittee provided the basis for the Court's refusal to consider a reduction of his prison sentence. Responding to the fears expressed by the Government, Judge Goettel explained that the prison sentence could not be reduced because:

> In his recent plea to Congress that he was being prosecuted solely because of his religious views, [Reverend Moon] totally misstated what was involved in the prosecution. . . . There is nothing to the argument that he was persecuted because of his religion. He was tried for specific offenses of a non-religious nature. He was convicted of them and to reduce his sentence now would give further fuel for the argument that he has been persecuted, when he has not.
>
> * * *
>
> . . . there is a need to let the public know that everybody is viewed by the courts as equals and that wealth doesn't affect the sentence administration. (Emphasis added.)

Hearing on Motion to Reduce Sentence, July 18, 1984. Ironically, the same adverse publicity which precluded a trial by a fair and impartial jury was also cited in support of the Court's decision not to reduce Reverend Moon's sentence. Essentially then, actual fairness to the defendants in this case has been sacrificed in order to maintain a false "appearance of fairness."

As discussed below, the Government's actions in this case and the Court's approval of those actions, resulted in a complete denial of a fair trial to Reverend Moon by a panel of impartial jurors. The trial, moreover, entailed an unfettered jury inquiry into the tenets, practices and procedures of a recognized religious institution, as well as the punishment of a religious leader based upon his exercise of the Constitutional right to freedom of expression.

A. Reverend Moon Was Investigated, Not Simply As a Taxpayer, But Because He Was the Head of the Unification Church.

The investigation which eventually led to the indictment, trial, and conviction of Reverend Moon was initially directed at the Unification Church and at Reverend Moon in his capacity as leader of the Church. Thus, in his letter to the Commissioner of the Internal Revenue Service, Senator Dole listed the following reasons for an investigation of the Unification Church:

> (1) "Most of those contacting me question whether the organization is based on a *bona fide* religion or on mind control techniques. . . . This may indicate that the organization is maintained not by religious motivation, but by the calculated eradication or erosion of each member's ability to make an alternate choice. *The well-documented process of training and initiation activities appear to substantiate that the*

> organization is based more on mind control and indoctrination then on religious faith.
>
> (2) Many Kansans have advised me that a major purpose of the organization is the accumulation of wealth and power and not the pratice or furtherance of religion. . . . Members of the organization are subjected to great pressure to obtain funds, suggesting that the exclusive purpose of the organization is not a religious one, but that in fact a major goal is the accumulation of wealth.
>
> (3) . . . Mr. Moon has made several statements implying political and governmental objectives. Since many members of the group apparently perceive Mr. Moon to be the embodiment of the Church, the appearance is that his stated intentions are not simply the goals of a private individual but the stated purposes of the organization.
>
> (4) . . . Mr. Moon, leads a far more affluent life then could reasonably be expected for any clergyman. This fact, if substantiated, suggests that a substantial portion of the group's net earnings, including the sizeable wealth collected by its members may accrue to the private holdings and benefit of Mr. Moon. (Emphasis added.)

Letter dated January 9, 1976 from Senator Robert Dole to Mr. Donald Alexander, Commissioner of Internal Revenue.

The District Court addressed Senator Dole's letter during post-trial proceedings, when it dismissed the defendants' claims of selective prosecution. Judge Goettel stated:

> . . . for as long as I can remember, Congressmen and Senators have been raising their voices about various people they thought should be investigated or prosecuted. It has happened, I don't know, how many times in the past. If the simple fact that there is a political leader who thinks that an individual or group should be investigated is adequate to open up a selective prosecution

> hearing, we are going to have an awful lot of them. S34.

The Judge's comments ignore two critical facts, however. First, Senator Dole was a member of an important Congressional committee with jurisdiction over the Internal Revenue Service. In that capacity, he specifically requested that an investigation of the Unification Church be undertaken. Second, the letter requesting the investigation is replete with accusations of brainwashing, empire building and political activity against a church which the New York Court of Appeals has characterized as a genuine religious institution. Under these circumstances, it was not unreasonable for Reverend Moon to question the motivation for the Government prosecution which subsequently ensued. [5]

On March 10, 1982, Reverend Moon moved for a bench trial on the ground that pervasive public hostility precluded the selection of a fair and impartial jury. By letter dated March 11, 1982, the Government's senior litigation counsel, Joanne Harris, advised the Court that the Government was concerned with the questions the defendants had raised concerning the integrity and motives of the prosecution:

> Defendant Moon has stated publicly that "I would not be standing here today if my skin were white and my religion were Presbyterian. I am here today only because my skin is yellow and my

---

[5] See also, paragraphs 1-4 of superseding indictment.

> religion is Unification Church." Indeed, for three hours at a rally in Foley Square following the defendants' arraignment on October 22, 1981, speaker after speaker charged religious persecution and racial bigotry.
>
> We believe that these allegations, however unfounded and irrelevant, have placed any single fact-finder, such as the Court in an untenable position. When the defendants attempt to create a public atmosphere of distrust for our system, as they have here, there is an overriding public interest in the appearance as well as the fact of a fair trial. . . . The Government believes with a careful, searching voir dire the impartial jury we all seek can be impaneled and with an appropriate order from the Court, protected from improper influence. (A811.) (Emphasis added.)

At a hearing on March 17, 1982, the Government presented its oral argument explaining why it would not agree to a bench trial:

> We like to think of ourselves . . . as responsible public officials, and we have two roles here. One is certainly as advocates, but the second is to protect the public interest, the public interest in the defendants' right to a fair trial, but certainly another public interest, which is distinct from the defendants' right to a fair trial, and that is the deep and central place of a trial by jury, a resolution of the facts in a criminal case by a jury in this system. (P370.)
>
> * * *
>
> . . . we have a defendant who has clearly . . . set out to blame any adverse decision in this case on racial and religious bigotry. And to us, that places any single trier of fact in an untenable position, because the trier of fact is going to be blamed. (P371.) (Emphasis added.)

The Court, in response, asked the prosecutor why the public interest should outweigh the interest of the defendant:

> The question is, when you have a problem of hostility to a defendant such as to imperil his opportunity of getting a fair jury trial, should

> not his decision that he is better off waiving what is generally to his advantage be expected? (P372.)

The Government disagreed. It concluded its argument by stating that the Court should begin conducting *voir dire* and that if it became apparent that it was not possible to obtain a fair and impartial jury, the Government would not hesitate to reconsider its position. (P374.)

In deciding Reverend Moon's motion for a bench trial, the Court noted that its inherent power to overrule a Government refusal to waive a jury trial should be "sparingly" exercised. The Court, accordingly, refused to exercise that power stating:

> . . . *I am impressed by the possibility that one of the two defendants may be so distinctly unpopular that it is going to be impossible to get a truly fair jury, and I express reservations about the ability of even a searching voir dire to pick out those who may have what are to them known biases that they do not choose to reveal.* On the other hand, I do not think that we can take such a drastic step as refusing to accept the Government's jury preference without making an actual effort to deal with the panel first and see what sort of responses we get from real live prospective jurors. . . .

The Court thus concluded that it would be proper to select a jury as the Government had requested. (P382.)

B. The Highly Prejudicial Publicity Surrounding the Unification Church and Reverend Moon Precluded Any Possibility that a Panel of Jurors Free From Bias or Prejudice Could Be Selected.

The extremely prejudicial atmosphere in which jurors were selected, and in which Reverend Moon was tried, is exemplified by the remarks of a broadcast announcer on a popular New York radio station, WYNY, on March 22, 1982:

> Today the jury tax evasion trial of Reverend Moon begins. . . . Hang the sucker. (TR. 256-257.)

Many widely read New York newspapers, such as the New York Post and the Daily News also contained headlines sounding similar themes, such as "Deport Him" and "Moonie Sun May Set During Federal Tax Trial." (TR. 442-443.) Even more astounding, however, are the remarks published by respectable publications within the legal system itself, such as the American Bar Association Journal. In its March, 1982 edition, the Journal included a critique of the movie "Ticket to Heaven," a film intended to depict the activities of the Unification Church:

> Ticket to Heaven is exciting, provocative and as timely as recent headlines concerning the litigation including Synanon and the Church of Scientology. Moon would hate it, but then, if he appears in the United States to watch it, he will have to stand trial on charges of tax evasion. The trial doubtless will be protested by thousands of emaciated, zombie-like flower sellers and a few First Amendment voluptuaries who have not seen Ticket to Heaven. (TR. 258-259.) (Emphasis added.)

It was in this atmosphere that jury selection for the trial of Reverend Moon began, and continued, for almost seven days.

1. The Jury Selection Process Confirmed That Prospective Jurors Had Been Saturated With Negative Information Concerning Reverend Moon and the Unification Church.

The results of the *voir dire* examination of the prospective jurors can best be appreciated from the following statements made during the Court's questioning:

Susan Hill

> . . . because of religious beliefs and the reputation of the man. . . . I . . . [sic] feel my feelings as a juror would be prejudicial. (TR. 86)

B.A. Zilkowski

> My religion has spoken out very strongly against Dr. Moon in the past and the pastor has expressed that to the congregration. (TR. 91)

Herman Roth

> . . . I hesitate to say that I feel so prejudiced at this time and I realize that he deserves a fair trial. (TR. 208-209)

Nicholas Visalli

> Well, I feel that I pay taxes, and here a man who has a pseudo-religious -- --
>
> [Mr. Vassali was interrupted in order to prevent further comments before other prospective jurors and continued his remarks *in camera* before the judge.]
>
> * * *
>
> I make hard earned dollars, and I pay 50 percent to the Federal, State and local government, and I feel that this pseduo-religious organization that

makes millions of dollars and they don't pay taxes, I just can't be impartial. (TR. 275)

Joanne Lenard

I guess I feel that the young people become mesmerized or something, they feel he is a terrific leader and bigger and better things and he can accomplish them. . . . (TR. 354)

I guess the underneath thing being it is not quite legal, not quite legitimate. (TR. 368)

Rosa Grant

. . . they had the members give them a certain amount from their salary. The way they talk about him I think that's the way he's doing it. (TR. 377)

Well, they are just out to get money in different ways, is all I can figure out, besides the right way.

* * *

Well, I think he should pay his taxes like anybody else. The rich have to pay, the poor, so why should he hold his money and not pay it? Even if you hit the lottery or the Zingo [sic], you have to pay tax on that, so why shouldn't he pay taxes on what he has? (TR. 379-380)

Gavino Gonzalez

. . . they happened to be with the Moonies, they were children and brainwashed and they went to the center and they couldn't get them out. . . . (TR. 406-407)

About how they forced kids to work for them and don't let them out. (TR. 408)

Mary Nimmo (Juror) [6]

I would say this: I wouldn't have wanted my children to have been a part of it from what I

---

[6] Mary Nimmo was selected to serve as forewoman during the trial. At the conclusion of the trial and following the jury's verdict against Reverend Moon, it was brought to the Court's attention that certain inflammatory, extra-record charges and suspicions concerning Reverend Moon and the Unification Church might have been injected into the jury's deliberations by Ms. Nimmo. In the post-trial jury hearing which followed, Virginia Steward, one of the jurors, testified that:

(1) Prior to jury selection, when she asked who Reverend Moon was, Ms. Nimmo responsed "Oh, you must be stupid, he is the one who has this group and they brainwash kids." (TR. S488.)

(2) Ms. Nimmo stated that Reverend Moon's children were having some troubles in a school close to her home, and that "he was a little troublemaker in school." (TR. S488-489.)

(3) With respect to whether Reverend Moon "forced children to do things," Ms. Nimmo responded before the trial began that "he's guilty."

(4) When asked whether she had read a newspaper article concerning the Judge's comments about the jury's intelligence, Ms. Steward responded "one woman said it was in the thing, that the judge had insinuated that we were all dummies and they were quite put out about it. In fact her daughter, Mary Nimmo's daughter wanted to write to the judge and let him know that her mother wasn't a dummy." (S. 513.) Ms. Nimmo told the other jurors that her daughter wanted to write this letter. (S. 514.)

(5) After reading the article Ms. Steward said "just then Mary came in and said "Heck, how do you like that? We're all dummies." And I said, "Yeh, I am a dummy," not knowing what she was talking about and that's when she mentioned the statement that was read."

(6) Ms. Steward reported that in a group of 15 or 20 prospective jurors including Ms. Nimmo, it was stated, "Oh, see, he keeps his children from their families. And, uh, you know, he tells them that the families, their parents are devils, and they have to

(Footnote Continued)

> heard. I would have been against that. . . . (TR. 473) . . . you'll probably say I am prejudiced, but I have to say it -- I would prefer if I were to -- if my children were to be part of a religious group . . . I would rather they stayed with the three major religions, what we have, which is Catholic, Protestant and Judiasm. . . .

(Footnote Continued)
sign everything over to him and all this stuff."

Subsequently, when Ms. Nimmo was called to testify,she denied that she had made any of the comments recounted by Ms. Steward, acknowledging only that she had read the article in the newspaper about jury selection and that she was aware that one of Reverend Moon's children attended a school near her.

With respect to the Judge's comments regarding the intelligence of the jury, Ms. Nimmo stated during the hearing that she didn't know who made the alleged statements in the jury room and that "I think it was passed off as a -- passed off lightly." Subsequently, when the third and final juror was called, he was unable to confirm either Ms. Steward's recollection or disagree with Ms. Nimmo's characterization of the disputed events. His only recollection was that when Ms. Nimmo discussed the newspaper article, "she was upset about it, and you know, I guess she felt, she took it personally, you know." (S643.) The Court subsequently ruled that it did not find Ms. Steward to be a particularly credible witness while Ms. Nimmo on the other hand was found to be credible. The Court further ruled that the jury inquiry had progressed far enough and that no further witnesses would be called. (S658-659.) The Judge's decision is somewhat puzzling in the context of the comments made by Ms. Nimmo during jury selection. These comments support Ms. Steward's version of what Ms. Nimmo actually said during the voir dire.

It should be noted in this connection that the Government argued that "much about Ms. Steward's testimony . . . is puzzling to say the least and in many instances makes no sense, and I think there are a number of reasons for that. . . . (S656.) Ironically, the same Government attorney stated during jury selection that "Virgina Steward . . . is a housewife, a very, very solid and intelligent woman." (TR. 1771.)

> . . . I would say that I'm not prejudiced, but those religions I understand and accept. The cults I don't understand. . . . (TR. 477-478)

[When asked what criticism she had heard of the "Moonies" Ms. Nimmo responded:]

> Well, he gets all these young people to work for them. They work for little or no money. It's become a big organization. He's become a very wealthy man. (TR. 480)

Eugene Scott

> I'll tell you what happened now. My belief is three different denominations -- Protestant Jewish and Catholic. That's what I goes by. Any other ones come, he's just hooey, nothing to me.[7] (TR. 516)

Eugene J. Bruno

> I have heard people indicate that the Church was maybe not legitimate or some such thing, but that is about it. (TR. 545)

Orlando Piedra

> I think it was 60 Minutes, one of the TV shows, and it dealt with parents trying to get a child back from the Moonies. I don't know, they finally got him back and they had to go through some process. (TR. 575)

> Well, some of them . . . feel that . . . they are bothering them when they are in the streets, you know, trying to raise money and so on, at airports, places like that.

* * *

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[7] The Judge subsequently refused to grant a challenge for cause on the ground that it was not necessary for jurors to accept the fact that the Unification Church was a genuine religion. See discussion, infra at 34-35.

. . . I truthfully am not too happy with it. I don't think that they should go about that way in raising money. (TR. 576-577)

. . . he lives very, very comfortably. I mean, the church supports him in a style that I would say, you know, like somebody that was rich. (TR. 578)

. . . the difference is their commercial end of their structure seems to be too commercialized.

* * *

The raising of funds doesn't give me a negative opinion of the church. It is a fact I am wondering where the funds are going. (TR. 584-585)

[The judge subsequently denied a challenge for cause. TR. 724-725, 730.]

Virginia Steward (Juror)

Q: Do you think its appropriate for religious groups to solicit funds on the street or at airports?

A: No.

[NOTE: Almost one-third of the prospective jurors interviewed responded "No" to this question.]

Molly W. Kramer

I suppose, based on the World Book article, they do give them the feeling of community, they allay their feelings of being alone, and then there was something they said about brainwashing.

I tried to put myself in their shoes and try and ask myself, how would I react if somebody was continually talking at me, and I think I would react to the point where I would try to run away. (TR. 647)

Richard Fox

. . . In my local community there were two people that were with the Unification Church working in an alternate learning center which is part of the public library.

They were sort of driven out when it was found out that they were members of the Unification Church.

* * *

Other members of the learning center . . . forced them to resign as volunteers. (TR. 834-835)

Esperanza Torres (Juror)

[When asked whether she had read anything about the Unification Church, Ms. Torres said that she had read a story:]

. . . about a girl who joined the Unification Church and the parents tried to get her back.

[She characterized that story as follows:]

When the turmoil of this, the children had been following him and this girl, that the parents tried to or did go against what he was going with the child, with this girl. (TR. 846-847)

* * *

My impression is that the parents are right in a way. (TR. 848)

[Ms. Torres also stated that she had heard that Reverend Moon was] "the owner of this hotel downtown" (TR. 848) [and that she didn't] "know exactly if he has made his money through these, you know, exploitations or whatever you call it, of these people." (TR. 849)

[She also stated that she had heard that] "he exploits people to raise funds." (TR. 849)

[When asked what she had heard about the way Reverend Moon lives, his own lifestyle, Ms. Torres responded] "nothing much except in luxury." (TR. 852)

[Ms. Torres also believed that] "some churches abuse their tax exempt status." (TR. 856)

[When asked why she believed the Unification Church was a cult, Ms. Torres responded:]

. . . from what I have read a little bit and from what I have seen in those pictures in the paper and a few rumors, especially this one, why does it have to be young, mostly young people? (TR. 856-858)

[In explaining why she felt that the Unification Church was different than traditional churches, Ms. Torres stated:]

Well, I'm Catholic . . . but you don't have to be Catholic, you don't have to be Hebrew, . . . to feel the spirit, you know, God's spirit. If I'm not mistaken, when I saw his face out there, Mr. Moon's face, I think I seen him on TV one time. . . the way he addresses to his people, I just didn't get that. . . . (TR. 862-863.)

Jack Klein

I think they are a cult, personally.

* * *

. . . To me it's not a religion like praying to God or something like that. To me it seems like they are just praying to one man. (TR. 921-922)

John Dunleavy

Over the years various different things as regards the Reverend Moon, particularly . . . where children, usually young people joined and they had difficult -- they were supposed to mindbend and things like that. This is what I read in the paper. (TR. 955-956)

. . . I would have to say that it's a cult.

* * *

A religion, I think, has to go back into the basics of religion from the very beginning and a cult is something that is individual who has the leader up there that people look up to and various things. A religion has a basis right down the line. (TR. 963)

People refer to them as the Moonies, and they are collecting money again. . . . (TR. 978)

[The judge subsequently denied a challenge for cause. (Tr. 1075-1076)]

Marianne Hassenkamp

I would say it's a cult. . . . it's a predetermined conditioning of Protestant, Catholic, Jewish basic beliefs. This is a foreign religion to me in the way that it does not conform to the practices I have known in the past. (TR. 1016)

[Ms. Hassenkamp subsequently stated that she considered Buddhism to be a religion, not a cult.] (TR. 1017)

[After stating that she had heard that the Unification Church used "brainwashing" to obtain young members "in the media" Ms. Hassenkamp stated that:]

My immediate reaction would be -- probably was at the time, I'm not sure, sympathy for the parents. (TR. 1027)

Julius Silverman

Well, the rabbi in my temple is not quite happy with them, and he's made several sermons. He has preached several sermons. He was very much against him.

* * *

I was angry. . . . At the cults. [Because of the things the rabbi said. When asked whether he believed what the rabbi told him, he stated:]

I think so, yes. (TR. 1071-1072)

James F. Walsh

I guess I would think of it as a cult. . . . I guess I don't really see the holiness involved with it. I see it as a group, a group of people. I don't see the religious aspect. (TR. 1126)

Barbara Thanner

This is a religious group and gaining members all over the place, mostly adolescents or young adults. Usually from better class families. He has a lot of real estate holdings, I know that, up near where I work and he lives not too far from where I live. He has big estates, impenetrable. (TR. 1148)

. . . as far as his Unification Church . . . I would tend to steer clear of them if I saw anybody in the street selling flowers or anything of that nature . . . being that I do have two teenage daughters. . . .

* * *

I don't have any particular thing against the Unification Church, but in general I would steer clear of any -- you know, any of the so-called religious cult groups, yes. (TR. 1149)

Matilda M. Milite

I have heard that it's a cult, but I wouldn't know. I would have no idea. (TR. 1158)

[**Judge Goettel**

Incidentally, I see people continually standing on street corners near where cars stop for traffic and they don't look like religious people to me, they look like people out just selling flowers. (TR. 1165)]

Phyllis M. Weinstein

The only thing I know about this gentlemen is that he makes children sell flowers and that's it. (TR. 1213)

I only read one article where a mother took a child to court, if that's the same organization. There are so many, I don't know. Where the mother said that they kidnapped her child and she wanted her back. It was a girl, I remember that. (TR. 1214)

I heard them say that he brainwashed them. That's what I heard here in court.

[When asked by the court what the veniremen were saying in Court about "brainwashing," Ms. Weinstein responded:]

That he makes the children -- that he puts them into such a trance that -- I don't know, but he brainwashes them. (TR. 1215-1216)

[When subsequently questioned as to how many people she had heard talking about "brainwashing," Ms. Weinstein responded:]

Five, six, a group. You know, here and there you hear something. . . . Not in the courtroom. In the hall. When you leave for lunch. It's never discussed here. (TR. 1227)

[Ms. Weinstein also stated that in the prospective jurors discussion she had heard:]

. . . he was a very rich man. . . . [and] that he brainwashes children, makes them sell flowers, which I knew about, because these children wore those things. (TR. 1228)

. . . I can overhear people who say like he is a rich man. Like the man who got up in court and blew up everybody and then there was a discussion after that. I figure it was the second day that the gentleman made an outburst in court. So there was a big discussion about that gentleman. I mean, I am not deaf. You can hear, you know. (TR. 1229-1230)

[At this point the defense counsel moved to challenge Ms. Weinstein for cause. This motion was denied by the court.]

[Judge Goettel

I am very unhappy to hear that people out in the audience are talking about brainwashing. Unfortunately, since I have discharged everybody except a handful we are keeping here, there is nothing much more we can say to them now. (TR. 1224)]

William Norman

Well, it seems that everything they write about him is derogatory and it is always against the man. . . . So, well, I figure that they know more about him than I do so I accept whatever they write. (TR. 1306-1307)

Marcella Tobias

I have heard that the Reverend Moon's church . . . abuses their tax exempt status. (TR. 1317)

[Expanding on the critical remarks that she had heard "people" make, Ms. Tobias stated:]

Oh, somewhat negative, that they were brainwashing, corralling these kids and keeping them without food and water. . . . (TR. 1326) (Emphasis added.)

Rosa Spencer (Juror)

[Ms. Spencer did not think that it was appropriate for religious groups to use church funds for business; Ms. Spencer had also heard that the Unification Church or Reverend Moon owned businesses and did not believe it was appropriate for religious groups to solicit funds on the streets and at airports.] (TR. 1348-1349.)

Dorris Torres (Juror)

[Ms. Torres had heard from her sister that "some people think he [Moon] is a god." (TR. 1391); she did not believe that it was appropriate for religious groups to send members out to solicit funds on the streets or at the airport but that the Church should get funds from "their own church" (TR. 1393); Ms. Torres had also heard from her sister that "the Unification Church brainwashes young people" (TR. 1394); she concluded that her sister did not have any good things to say about the church. (TR. 1404)

Michael J. Dorlester

[Stated that he had read:]

About his religious movement, some of the controversy about the deprogramming, people have tried to deprogram Moonies. I remember reading about he had a mass wedding ceremony, reading about that, the rally that he had at Yankee Stadium a number of years ago. That's what sticks in my mind. (TR. 1473)

[He further stated that he had heard "people" say:]

That it is a phony religion, that the Reverend Moon has a business going as opposed to a religious movement, people have expressed sympathy for the parents of people who become Moonies.

* * *

I sympathize with the parents of people who become Moonies. . . . I don't believe that the Reverend Moon is a messiah, as he has portrayed himself to be, and I think that he has a business group. . . . I believe that he is enriching himself through his religious organization. (TR. 1474)

Diane Adams Crews

In the church that I attend . . . the minister warned the young people to stay away from them . . . as a matter of caution but it was left up to the individuals what they are going to do. (TR. 1488)

Ugo Durante

. . . from what I read, I did form an opinion because of the fact that a lot of young people were taken in, and they were sort of mesmerized . . . to the point of no return, and an example of something that stands out in my mind very well is the incident . . . when some children . . . had sort of disappeared from their homes and their families found out where they were, they came here to New York to try to retrieve them, and it was nothing. They just wouldn't go back. They disowned their families.

My children are big now, but I have grandchildren, and I would hate -- with the problems we have today, the Unification Church. (TR. 1508-1509)

Claudette D. Ange (Juror)

[Ms. Ange had heard people say] "that he was . . . brainwashing some teenagers, once they got into his organizations. . . ." (TR. 1514)

[She had also heard that:]

. . . they just said that he is very rich and he buys a lot of property, but he has children selling things, selling flowers, or something, to get the money to buy property. (TR. 1515)

. . . All I know is this man was accused -- he owned a business and they accused him of -- they were saying that this Reverend Moon was the one who really owned the business and was like using him as a front, or something, and he was denying it. He was having problems with the people in the neighborhood. (TR. 1535-1536)

[Ms. Ange stated that she did not have] "any particular reaction" [to this incident.] (TR. 1536.)

Myra C. Delanno

Yes, I heard a lot of criticism. I don't know whether they use the brainwashing or not but just took young people in there and ruined them. (TR. 1546)

. . . it is hard to answer why I think it is a cult.

I just think they don't practice religion the way I think it should be practiced. (TR. 1554)

I rather think he is kind of guilty. (TR. 1556)

Patricia R. Mauro

[In response to a question concerning what she had read or heard about the Unification Church, Ms. Mauro stated:]

Well, that he supposedly brainwashed people, . . . People going around selling flowers for the church. . . . I think the terrible things that he does, what he has done, to children. (TR. 1560-1561)

[Ms. Mauro subsequently stated that she believed the Unification Church "probably" abused its tax exempt status:]

. . . by buying lots of property, things like that. . . . and becoming involved in profit making ventures and not paying taxes. (TR. 1565-1566)

[The judge subsequently denied a challenge for cause. (TR. 1582-1583]

Maria Abramson (Juror)

[Ms. Abramson did not believe that it was appropriate for religious groups to send their members out in the streets or airports soliciting funds:]

. . . [b]ecause they are the church, they should collect their money in the church. (TR. 1588.)

[She also believed that:]

. . . religious cults exploit young people or cause them to change their religions by brainwashing them. (TR. 1588.)

Theodore Ryder

. . . Most of the people that I associate with don't believe in him or anything he stands for. . . . From what I have heard I disagree with what he stands for. . . . such as turning over what they have to him, things like that. (TR. 1602-1603)

I think it is a cult. . . . Because it is not -- I guess it is more like almost a business. The churches that I am involved with just don't do things like they do, so it is different. (TR. 1606)

I don't think it is right really to turn over everything to the church. I wouldn't do it. (TR. 1616)

Well, I guess they believe in him, he is more or less their God. . . . Or he is like God's right hand man, something like that.

* * *

They sell these books and they are always out on the streets . . . and by turning over . . . everything I had to that church . . . if he has 50 million followers that do that, they must have quite a bit of money, and it is more like a business than just making a weekly donation to your church. (TR. 1618-1619)

Paul J. Shanley (Juror)

[In response to the question of what newspapers or articles he had read about the Unification Church, Mr. Shanley stated:]

Well, the articles about the status of the church. . . . The status of the church in terms of is it a real religion, is it not a real religion, that kind of thing. People columnists questioning whether or not it was bona fide, I guess. (TR. 1631-1633)

[Mr. Shanley had also heard that:]

. . . religious groups exploited young people and caused them to change their religion by brainwashing. (TR. 1636)

[Mr. Shanley also acknowledged that he had been involved in discussions, where people had said only unfavorable things about the Unification Church. When asked what criticisms he recalled, Mr. Shanley stated:]

Well, I think some people felt as though the Church had . . . brainwashed . . . young people to go into that [the church] and then used them for selling things. . . . I think they kind of identified . . . that with . . . what happened to their own daughter . . . their own son. (TR. 1650)

[The judge subsequently denied a challenge for cause. (TR. 1655)]

Wilfred Sheridan

[When asked whether he had heard any prospective jurors talking about the case, or other people talking about it, he responded:]

Yes. . . . Just general comments about Moonies, I guess. . . . One person said, "I am against them, the Moonies." That is about all I can recall. (TR. 1665)

Anna Switnicki

Well, they have an Oriental as their, what, spiritual head he is considered? . . . That's different. (TR. 1832)

Peter Kane

I read some place, some woman trying to get her daughter deprogrammed. (TR. 1846)

Marjorie Strong

[When asked why she believed the Unification Church was a cult, responded:]

. . . they solicit in the street. . . . Something about the way they program their people. (TR. 1866)

> [The judge subsequently denied a challenge for cause. (TR. 1870)]

Brian Conway

> I know they have a lot of money. (TR. 1967)
>
> I guess they harass a lot of people unnecessarily. (TR. 1968)
>
> I heard he is supposed to have evaded taxes. (TR. 1972)
>
> [The judge subsequently denied a challenge for cause. (TR. 1976)]

Hyacinth R. Frazer (Alternate)

> [In response to a question whether she had read about the "Moonies," Ms. Frazer stated:]
>
> That they had to indoctrinate the young people in the church. . . . They are taking over New York City. (TR. 2052)

Ernest Fetchko (Juror) /

> I don't believe it is the business of religion to be in business myself. (TR. 2105)
>
> . . . I don't believe I have ever seen a Unification Church as a church building or a cathedral or anything like that. . . . Some place of worship which is dedicated to the religion. (TR. 2108)

In addition to these selected statements, almost half of the prospective jurors interviewed stated either that they believed, or that they had heard, that the Unification Church exploited young people or obtained its young members by brainwashing them. [8] Almost one-third of the prospective jurors had been exposed to critical comments by friends or neighbors concerning Reverend Moon and/or the Unification Church. [9] When asked whether they thought it was appropriate for religious groups to send their members to solicit funds on the street or at airports, almost one-third of the prospective jurors responded that they did not approve. [10] Several of the jurors had been approached by Unification Church members on the street selling flowers, [11] while other jurors stated that churches should not be involved in business activities. [12] Similarly, with respect to the image the prospective jurors held of Reverend Moon personally, almost one-quarter of the veniremen expressed opinions concerning the extensive wealth of Reverend Moon, e.g., "I guess he doesn't live too humbly."

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[8] TR. 437, 305, 324, 349, 350, 375, 377, 449, 604-606, 680-681, 686, 848-849, 833-835, 978-979, 985, 1013-1014, 1045-1046, 1170-1172, 1306-1307, 1311-1312, 1369, 1394, 1417, 1490, 1514, 1550, 1588, 1636, 1649-1650, 1602-1603, 1617-1618, 1887-1888, 1966, 2002, 2022-2023, 2074, 2106.

[9] TR. 325, 423, 446, 576-577, 639-640, 833-835, 956-957, 917, 890, 1071-1072, 1120, 1154, 1311-1312, 1474, 1487-1488, 1546, 1560-1561, 1649-1650.

[10] TR. 327-328, 376, 510-512, 624-625, 643-644, 785-786, 810, 950, 960, 1035-1036, 1254, 1270, 1293, 1314, 1349, 1550, 1587, 1684, 1861-1862, 1938-1939, 2073.

[11] TR. 391-392, 576-577, 786, 961-962, 1010, 1316-1317, 1553.

[12] TR. 510-512, 1886, 2105.

(TR. 348.) "I mean he lives on a grand scale." (TR. 368.) "It showed a big beautiful mansion." (TR. 424.) "Recalled reading something about some estates that he owned." (TR. 492-493.) "Moon is involved with large amounts of money" and "He does very well financially." (TR. 564-566.) "He lives very very comfortably. I mean, the church supports him in a style I would say, you know, like somebody that was rich." (TR. 578.) "He is a millionaire." (TR. 796-797.) "He has a mansion." (TR. 957.) "Wealthy." (TR. 1216.) "He is a fairly wealthy man." (TR. 1368.) "I have heard on the news that he is very wealthy." (TR. 1414.) "He lives quite sumptously." (TR. 1548.) "He lives on an estate." (TR. 1562.) "He must live pretty high." (TR. 1885-1886.) "They have a great big place in Westchester." (TR. 2071.)

The most critical question propounded during jury selection, however, was "Do you think the Unification Church is a real religion or . . . a cult?" Of the 77 jurors to whom this question was posed, 34 responded that they did not know, [13] 18 "believed" that the Unification Church was a cult, [14] 5 had "heard" that it was a cult, [15] 8 either guessed or assumed it was a religion [16] (some because the organization was referred to as the Unification "Church"), while only 11 responded that they believed it was a genuine religion. [17] Significantly, of the jurors who were eventually impaneled, 9 did not know whether the Unification Church was a cult or a religion, 1 believed that it was a cult, and only 2 expressed the belief that it was a religion.

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[13] TR. 308, 330, 408, 450, 495, 612, 773, 805, 820, 897, 1000, 1057, 1200, 1221, 1240, 1275, 1295, 1317, 1351, 1371, 1419, 1448, 1520, 1638-39, 1687, 1890, 1941, 1955, 1972, 2025, 2057, 2107, 2089.

[14] TR. 354, 379, 515, 639, 674-675, 789, 857, 921, 963, 987, 1016, 1071, 1126, 1149, 1554, 1606, 1833, 1866, 2003.

(Footnote Continued)

The jury examination clearly revealed that to the extent the veniremen knew about Reverend Moon or the Unification Church, their attitudes were overwhelmingly negative. This tendency was acknowledged by the trial judge at the conclusion of the voir dire process. (TR. 1758.) Further, as revealed by the statements set forth above, the final jury panel was not unaffected by such prejudicial attitudes.

2. The Court's Decision That Jurors Did Not Have to Accept the Unification Church As a "Real" Religion Precluded An Objective Consideration of the Tax Issues in This Case.

The potential impact of the juror's uncertainty concerning the Unification Church's status as a cult or a

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(Footnote Continued)

[15] TR. 368, 473, 545, 680, 681, 1154.

[16] TR. 393, 425, 627, 1183, 1256, 1779, 1848, 2039.

[17] TR. 581, 838, 941, 1038, 1396, 1491, 1566, 1590, 1664, 1794, 2075.

bona fide religion was explained by defense counsel:

> . . . if somebody . . . expressed a strong bias against this religion or not accepting it as a religion and part of the whole defense is that it is a religion and therefore this man was entitled to hold monies in trust for the religion, we never reach that point with this man. . . . If he rejects out of hand the concept of the Unification Church as a valid religion, he only accepts three major religions, and part of the proof of the defense of this case relates to the ability of a leader of a church or a religion to properly hold money in his name for the church, if . . . the prospective juror . . . does not accept one of the underlying premises that there is a religion involved here, then we never get to the second part of the proof. (TR. 534-535.)
>
> THE COURT: Well, I am not sure that that follows. . . . But I can see the argument you are making. A person starts off with a preconceived belief that this is not a religion, and if it is not a religion, then its got to be some sort of fake, and if its a fake, the Government's proof of the tax charges becomes a lot easier. (TR. 536.)

This discussion occured after the examination of Eugene Scott elicited a response that:

> My belief is three different denominations -- Protestant, Jewish and Catholic, that's what I goes by. Any other ones come, he is just hooey, nothing to me. (TR. 515-516.)

Counsel for Reverend Moon subsequently pointed out that the Government had represented it was not going to contest the assertion that the Unification Church was a bona fide religion, and argued that it was vital that the jury be told that the Unification Church was in fact a religion.

(TR. 530-531.) The Government prosecutor disagreed, however, stating:

> I think that we do not have to go nearly that far. I mean, its being presented as a religion. Most of the witnesses will call it a religion. It is not an issue in this case whether or not its a religion. (TR. 531.)

Similarly, the Court, in response to defense counsel's suggestion that the description of the Church as "hooey" reflected a strong negative opinion, stated:

> I'm not certain *per se* that that is a disqualification, a disqualifying factor, unless he allows his beliefs about the religion to carry over to the man. (TR. 532.)

Accordingly, the Court denied defense counsel's challenge to the prospective juror stating:

> I am still back to the point that I don't think, even in the case in which the leader of a religion is on trial, that you can disqualify for cause a member of the other religion whose beliefs in that religion are absolutely fixed to the extent that he will [not] accept any other religion. . . . I think he is entitled to his views. There is nothing wrong with a person holding those views and he said that despite those views he can decide the case fairly. (TR. 723-724.)

* * *

> I don't think as this case is going to be tried that religious doctrines and dogma are going to be such that somebody's strong belief in a different religion is going to have any effect on the way they decide the case. (TR. 722-723.) (Emphasis added.)

The Government, however, did in fact try this case on the theory that the religious doctrines and tenets of the Unification Church were not *bona fide*. The principal theory asserted in defense of Reverend Moon required that the the jurors at least accept the fact that the Unification Church was a genuine church. Consequently, because at least one of the jurors believed the Unification Church was a cult, and at least nine jurors were uncertain as to whether it was a true religion, Reverend Moon was clearly denied a fair trial.

3. The Court Ignored Clear and Pervasive Bias Against Reverend Moon and the Unification Church in Denying Reverend Moon's Final Motion for a Bench Trial.

At the conclusion of the jury selection process, Reverend Moon renewed his request that the Court reject the Government's refusal to accept a jury waiver. The basis for this motion was the pervasive bias of the prospective jurors with respect to the Church, the question of "brainwashing," questions concerning the use of funds by the Church and their attitude toward Church fundraising activities. In addition, the defense contended that it was not accorded a number of peremptory challenges sufficient to effectively eliminate prospective jurors with prejudicial preconceptions. Finally, Reverend Moon's counsel emphasized that approximately nine of the prospective jurors interviewed during voir dire had mentioned incidents of discussions among the prospective jurors concerning Reverend Moon and the Unification Church, as well as conversations concerning the prospective juror's knowledge that the defense was having a difficult time finding unbiased jurors.

The Government argued in response that:

> . . . the process of jury selection has demonstrated that you could get a fair and impartial jury. (TR. 1732.)

Similarly, with respect to the various prejudicial conversations among the veniremen, the Government attorney stated that it was "something . . . awfully minor in the overall context of this process," and noted again that:

> If we didn't believe that we could get a fair and impartial jury for Mr. Moon and the Government in this district, we would have consented in the first place. If we didn't believe that we got one now, we would consent at this time. (TR. 1737.)

Despite the foregoing evidence of pervasive bias among the prospective jurors, the Court once again denied the defendants' request for a jury waiver stating:

> I believe that when a defendant in a criminal trial has reasonable cause for believing there is a substantial prejudice or bias against him personally and that when he wishes to waive a jury trial, that preference should not be overborn by the prosecutor's desire for a public trial by jury. That is my personal view. It doesn't appear to be the law. The rule in the judicial interpretations of it seem to put no restrictions upon the prosecution being able to insist upon a jury. (TR. 1752.)

In view of the pervasive prejudice against Reverend Moon and the Unification Church revealed during jury selection, Reverend Moon's decision that it was in his interest to waive a jury trial should not have been disregarded by the Government based on the Government's perception of the "public interest."

C. The Government's Prosecution of This Case on the Basis of Whether the Unification Church Was a True Religion, Deprived Reverend Moon of the Opportunity For a Fair Trial.

The prejudice accruing to Reverend Moon as a result of the Government's insistence on a jury trial was exacerbated by the presentation of the case in terms of whether or not the Unification Church was a genuine religion, rather than as a simple tax case. The most critical statement made by the Judge during the proceedings against Reverend Moon, came at the conclusion of the jury selection process, in the context of the Judge's decision denying Reverend Moon's motion for waiver of a jury trial:

> If this criminal case were being tried on whether or not the Unification Church is a true religion or a cult, or whether or not it has been beneficial to America, the situation would be pretty critical, because to the extent that people know about it, it is true that their attitudes are negative.
>
> However, the issue in this trial is whether or not certain properties belonged to defendant Moon and whether he should have declared them as his and paid taxes on them. . . .
>
> I don't mean to suggest that general attitudes toward the Church and to the Moonies don't impact on juror attitudes. But they won't impact as directly as those were the issues to be tried. (TR. 1758-1759.) [18]

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[18] The trial judge subsequently pointed out that he was concerned that in the effort to find a jury totally free from bias, people had been selected "who don't read much, talk much and don't know much" and that the jurors would therefore tend to be the educated and less intelligent
(Footnote Continued)

The crucial significance of this statement can be fully appreciated only through a review of the manner in which the Government conducted Reverend Moon's trial. During its opening statements to the jury, as well as during the direct and cross examination of both Government and defense witnesses, and continuing through its summation to the jury, the Government consistently attempted to introduce evidence or to elicit testimony intended to prove that the Unification Church was in fact not a true religion, but was rather a massive and complex business operation directed by Reverend Moon, which was supported by a cadre of young "Moonies" who had been brainwashed by the Church and compelled to solicit funds in order to support Reverend Moon's "luxurious" lifestyle. In this effort, the Government consciously attempted to appeal to the various prejudices which had been revealed during the jury selection

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(Footnote Continued)
people. Noting that this would not be a problem unless the case became complicated, the Judge concluded "I would have thought it fairer to have this case tried without a jury." (TR. 1759-1760.)

> . . . I would feel better about the fairness from the position of defendants had they been granted a non-jury trial. But I don't feel I have the right to substitute my views on that matter to what appears to be the law and what I understand to be the law. Consequently, I have to deny the defendant's motion. (TR. 1761.)

process -- the very same prejudices which Moon had cited as the basis for seeking a non-jury trial.

1. The Government Consistently Portrayed the Unification Church as a Mere Business, and Reverend Moon as a Businessman, in Its Presentation to the Jury.

During the jury selection process, a majority of the prospective jurors interviewed stated that they were aware that Reverend Moon, or the Unification Church, were involved in various business enterprises. As noted earlier, a number of the veniremen also did not believe that it was appropriate for a church to be overtly involved in business activities. Many of the prospective jurors who questioned whether the Unification Church was a bona fide religion moreover, expressed the opinion that it might be considered a cult in view of its extensive involvement in commercial operations and the fact that many of its members were involved in fundraising activities. A large number of prospective jurors clearly stated their opposition to the practice of soliciting funds on street corners or at airports.

The Government promptly proceeded to exploit these concerns, addressing them in opening remarks to the jury:

> MR. FLUMENBAUM: The evidence will show that Moon was not only a leader of a church, but also a very very successful businessman. . . . You will hear evidence about fundraising, and you will hear in early 1973 members of the church fundraised primarily by selling flowers. You will hear how

> Moon set quotas for the fundraisers, both American members of the church and members from Japan and Europe who were specifically brought over to help the fundraising effort. (TR. 2163-2164.)

As noted by the Court during pre-trial proceedings, however, the actual source of the disputed funds, or the manner in which they were obtained, was not relevant to any of the substantive counts against Reverend Moon:

> THE COURT: Where does the tax offense of Moon come into this? Let's assume that the Church, through these activities, is raising substantial funds, ... At least prima facie these funds belong to the church. Where is the personal tax offense involved in that? . . . This sort of thing has been drifting around in this case from the beginning. To this day, I don't understand the tax consequences or the difference. What difference does it make, taxwise, whether the monies came from Japanese who contributed or from people who bought flowers and gave them to --
>
> MR. FLUMENBAUM: I think you are right. It does have to do with the obstruction part of the case, which is a separate aspect of it. So it would be overstating the case to say that the question of flower-selling would not come up; it will come up.
>
> THE COURT: It comes up, but it is not crucial to the tax evasion.
>
> MR. FLUMENBAUM: No, not to the Government's theory of the tax case. Certainly not. (TR. 483-485.)

The Government, nevertheless, purposely presented such inflammatory issues to the jury.

Similarly, as the actual trial of Reverend Moon began, the Government immediately attempted to introduce evidence which indicated that many young church members worked long hours at low salaries, which were for the most part contributed back to the Church, while Reverend Moon retained his own salary. [19] The Court rejected defense objections to the introduction of such "evidence," noting that it tended to demonstrate "who is getting the money out of the enterprise as a profit-making enterprise." (TR. 2496.) The Court further reasoned that:

> The picture the jury could draw is that everybody else is working for nothing just for the benefit of the Church, but that the Reverend Moon is running the whole business for his own benefit since he is the only one keeping his salary out of it. Whether that is a justified inference or an unjustified one, it is a permissible one and it seems to be consistent with the Government's case. (TR. 2498-2499.)

Counsel for Reverend Moon subsequently addressed the issues of evidentiary relevance and juror bias once again, in a motion for a mistrial, stating:

> . . . the evidence . . . we feel is marginally if at all relevant to the issues in the case. It is highly prejudicial because it relates to the very areas which the jurors have indicated prior to their being sworn that they have feelings, which feelings if translated could relate to a bias and hostility toward Reverend Moon and the Church, and because your Honor, they are areas which we believe bring into the case the issues which are in the nature of church doctrine, theology and practices which can only be resolved by inquiring into religious beliefs in violation of our client's First Amendment rights. . . . We believe, your Honor, the evidence has no direct bearing on any of the tax issues in the case. Reverend Moon's salary from Tong Il was reported on his returns, and we believe that there is no

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[19] A defense witness subsequently testified that these Church members did not need a salary because all of their needs were provided by the Church.

> issue in the case relating to the propriety of other members working as volunteers or pooling their resources for their mutual support. (TR. 2544-2545.)
>
> * * *
>
> The evidence tends to bring into the case the very matters in which jurors acknowledged bias and negative preconceptions; that is, your Honor, the whole notion of exploitation of young people by making them work for little or nothing to support Reverend Moon and, your Honor, the view of the Church as a business entity in the guise of a Church. (TR. 2546-2547.)
>
> * * *
>
> The Court's rationale for going to trial with the jury and substance indicated that this was simply to be a tax case and that we would not get into other matters, matters that related to these more as I would characterize them as explosive issues. . . . We believe, your Honor, that a mistrial is required because of this violation of our client's First Amendment rights, because evidence about the church's operation of businesses, supporting of Reverend Moon and dedication of members earnings for church purposes places the issue of religious doctrines of the Unification Church. (TR. 2547-2550.)

The Court responded to the motion by observing that the evidence was not in fact prejudicial:

> THE COURT: I would observe initially that the fact that groups of persons united in a religious belief live together, work together and donate all their earnings to the church is not to my way of thinking a prejudicial matter. Christian brotherhoods have lived in that mode for thousands of years. Buddhist monks traditionally live that way. There is absolutely nothing prejudicial, per se, in the proof of that sort of thing. (TR. 2552.)

However, as pointed out by Reverend Moon's counsel:

> . . . in the eyes of the world in which we are trying this case, those practices have been going on for so long, there are accepted by so many

> members of this society in which we live, that no one would think badly of them. (TR. 2555-2556.)

Such examples of popular acceptance, however, stand in stark contrast to the harsh and negative comments made by prospective jurors during voir dire.

During the trial, many witnesses were questioned extensively with regard the church's fundraising activites and goals:

> Q: Do you recall what goal was set for members of the church? (TR. 2763.)
>
> Q: In addition to that I take it [what?] you are telling us is that the local churches around the country as well had quotas, goals to meet? (TR. 2764.) [20/]
>
> Q: You have described Reverend Moon as the spiritual leader of the church and of the overseas church as well as the American church. Isn't it a fact that Reverend Moon also is a businessman? (TR. 3017.)

Similarly, the Government attempted to introduce into evidence a speech by Reverend Moon, which had been published for distribution to Church members. This speech referred to a 40-day national prayer mission and on-going campaigns to raise funds for the Church. In objecting to its introduction, counsel for Reverend Moon stated that:

[20/] Although the Court acknowledged at this point that "the church's fundraising goals . . . [were] too remote to the Government's direct case" it ruled that such "evidence" could be admitted because the Government had to prove who set Church goals as well as the source of the disputed funds. (TR. 2779.)

> This is going to give this jury a chance to try to convict because they see here is Reverend Moon telling them to go out and raise all this money and do all these things and sell flowers and candies and setting goals. If they want to set goals for themselves, they have a right to do it and that has nothing to do with this lawsuit. (TR. 4280.)
>
> * * *
>
> We saw a lot of these documents in discovery . . . but that was one of the reasons we asked for a non-jury trial, and it was precisely because of this kind of problem. At least as a Judge you can see this and look at it fairly. I can't see that 12 lay people are going to bring their emotions into this courtroom and they can't do that and I respectfully object to it.
>
> MR. FLUMENBAUM: This is a sophisticated jury who understands the evidence. (TR. 4285-4286.)

The Court overruled defense counsel's objection, however, and the Government continued its questioning in the following manner:

> Q: This had to do with a specific fundraising campaign, did it not? (TR. 4290.)
>
> Q: Isn't it a fact that your National headquarters got money from Mr. Kamiyama's team? (TR. 4297.)
>
> Q: These "Master Speaks" are published by the church's translations of Reverend Moon's speeches that are given on various occasions, is that correct? (TR. 4378.)
>
> Q: Isn't it a fact there were quotas set by Reverend Moon specifically with respect to the Belvedere trainees other than that was part of their training session in terms of fundraising? (TR. 4379.)

Subsequently, following the extensive direct examintion by the Government of one particular Church member regarding the business operations of the Church, counsel for

Reverend Moon advised the Court that his testimony would leave the record unclear as to the reasons for the Church's involvement in different business operations:

> MR. STILLMAN: . . . I would like to ask essentially one question with respect to those businesses, namely, what the purpose is for having them. I believe the witness would testify that the purpose is to allow the church to develop a financial base so that it can be self-supporting and go on and do their work. Now, my concern is --
>
> THE COURT: I know what your concern is. You are opening the door with a question.
>
> MR. FLUMENBAUM: Very wide. . . . Let me just state for the record: based on our review of some finance, these businesses drain money as opposed to generate money from the church. . . . If Mr. Stillman is going to bring that up, open the door on this, I feel that that would allow me on redirect to develop that whole area. (TR. 4818-4819.)

Shortly after the foregoing exchange, the Government questioned another witness so as to elicit testimony that Reverend Moon addressed business matters during meetings with several other Church leaders. On cross examination, Reverend Moon's counsel asked:

> Q: Did you from time to time at the meetings that you attended hear Reverend Moon speaking with church members and church leaders concerning matters of religion.
>
> A: Yes.
>
> MS. HARRIS: I object. That is outside the scope of the direct.
>
> MR. STILLMAN: Outside the scope? Is that not what we just listened to?
>
> MS. HARRIS: No religious matters, talking about business.

> THE COURT: Well, establishing they also discussed religion. We are not going to go into the subject.
>
> MR. STILLMAN: I'm not going into the subject. I just want to paint the whole picture for the jury. (TR. 5102.)

The Government thus continued to question witnesses with regard to the fundraising activities of the Church:

> Q: With respect to fundraising, did Reverend Moon set quotas for the trainees?
>
> * * *
>
> Q: How much did they have to earn before they could leave the training program?
>
> * * *
>
> Q: Do you remember what the quota was in the beginning for the training? (TR. 5130.)
>
> Q: These people would come back each night after a day of fundraising? (TR. 5131-5132.)

Later, during cross examination of a Government witness, counsel for Reverend Moon again attempted to establish the principles guiding the relationship between the Unfication Church and its various business enterprises:

> Q: Did you ever hear Reverend Moon express his view with respect to the relationship between the church and business?
>
> A: Yes.
>
> Q: And is it true, sir, that he has the view and expressed the view --
>
> MR. FLUMENBAUM: Objection.
>
> THE COURT: Let him finish the question.
>
> MR. FLUMENBAUM: Okay.

> Q: -- that he has a view that church and business go hand in hand?
>
> MR. FLUMENBAUM: Objection.
>
> THE COURT: What is the objection?
>
> MR. FLUMENBAUM: Hearsay.
>
> * * *
>
> MR. STILLMAN: If your Honor please, the Government seeks to establish the notion and they sure would like to get up on summation that Reverend Moon is simply a businessman and that's all there is to it here. And what I am suggesting to you is that there was in his mind and the view and the way in which this church operated, an effort to build a business and a church together, this witness understood that to be so, he has so sworn to the Grand Jury and I don't intend to go much beyond essentially what he said to the Grand Jury on this subject.
>
> THE COURT: I don't think it is an appopriate way to establish it. It is not a direct issue in this case at all. It might explain why certain things were done or not done, but a state of mind concerning the desirability to lead business and religious matters is not directly an issue in this case.
>
> * * *
>
> I would say moreover, if you do it you are opening a door to something you would not care to open the door to. So I will sustain the objection. (TR. 5254-5257.)

At the conclusion of the trial, counsel for Reverend Moon made a final attempt to place the Government's remarks concerning the Church's business ventures in their proper context. Once again his efforts were met with a Govenrment objection:

> MR. STILLMAN: Now, businesses. Churches own businesses. Many of the major churches in this

> country own businesses. The Mormon Church, the Catholic Church, other churches do.
>
> MR. FLUMENBAUM: Your Honor, I am afraid I will have to object. There is no evidence in the record.
>
> THE COURT: You are going outside the record Mr. Stillman. (TR. 6356-6357.)

Mr. Flumenbaum, however, stated in his summation to the jury:

> Moon is a businessman. Moon has always been a businessman. He was a businessman in Korea, he ran factories there, you saw his business card. You saw the fact that even when he was in the United States before he was on the board of directors of Il Wah Pharmaceutical Company in Korea, it is all in the evidence before you. We have those documents. (TR. 6472.)

It is thus evident that as a result of the Government's tactics, the jury was denied the benefit of a complete explanation of the Church's fundraising activities; the jury was essentially left to decide the case on the basis of the jurors' own preconceptions as supplemented by the Government's inflammatory "evidence." While the Court allowed the Government to introduce evidence in support of its theory that the Church was a business, not a religion, efforts by the defense to put this evidence in a fair and balanced context were met with Government objections. The Government's objections, as contrasted with those of the defendants, were sustained by the Court. Such a process fails to comport with the requirements of fundamental fairness established by the Fifth Amendment to the Constitution. The Government's actions, moreover, were tantamount to a denial of the respect and freedom from interference which all religions are entitled to under the Constitution.

2. The Government Attempted to Discredit Church Members Who Appeared to Testify By Focusing Its Questions Upon the Issue of "Brainwashing."

The most unfortunate example of the Government's efforts to exploit known juror preconceptions concerning the Unification Church occurred during the testimony of Church members who appeared on behalf of the Reverend Moon. The jurors were warned during the Govenrment's opening statements, to carefully scrutinize these witnesses for what were later to be characterized as obvious signs of "brainwashing":

> MR. FLUMENBAUM: I urge you to give careful consideration to these witnesses and scrutinize their testimony very very very carefully. You will find that these witnesses will be intensely loyal to Moon and Kamiyama. (TR. 2192.)

The actual meaning of this warning surfaced early in the trial during the Government's examination of Mr. Burgess, a Church member:

> Q: [MR. FLUMENBAUM] Mr. Burgess, you love Mr. Kamiyama very much, don't you?
>
> A: Yes, I do.
>
> Q: And you love Reverend Moon very much?
>
> A: Yes, I do.
>
> Q: You worked closely with Mr. Kamiyama since 1972?

A: I worked with him more closely in the later years than in the beginning.

Q: And you consider him your brother?

A: Yes.

Q: And you have helped him in personal matters in the past, is that right?

A: Yes, I have helped him with his immigration mainly and then just as brothers.

Q: Whatever he wanted you to take care of, you have taken care of it for him?

A: If he asked me to help him, then I try, yes. (TR. 2652-2653.) [21]

Subsequently, Mr. Flumenbaum examined another Church member, Mr. Tully:

Q: [MR. FLUMENBAUM] Are his speeches collected and published by the church?

A: Most are.

Q: Are they called "Master Speaks"?

A: In early times I think that is how they were referred to.

* * *

Q: Have you heard Reverend Moon say that the members have to be obedient to him?

MR. LAWLER: Objection, your Honor. May we have some offer of proof as to this?

---

[21] In pursuing this line of questioning, which continued with other Church witnesses, the Government degraded brotherly love and sincerely-held religious beliefs to a level of blind obedience and lying, contrary to every principle of religious freedom contemplated under the Constitution.

THE COURT: I know where it is going. I will allow it.

A: Yes.

Q: Have you heard Reverend Moon say that unless you were as wise as he or could do what he could that you must be quiet, keep silent and just obey him?

MR. STILLMAN: I object to this and I would like to approach the side bar. (TR. 4008.)

THE COURT: I see the relevance.

MR. STILLMAN: I don't see, your Honor, how speaking to members on circumstances that could be part of sermons, could be part of speeches that have religious overtones to members of this church, are fairly part of this record and I respectfully suggest that there is -- call it potential at this point -- violation of First Amendment rights to use it this way. Secondly, this notion of being obedient in the way in which it is being portrayed here is designed to play towards the kinds of prejudice that jurors could have toward Reverend Moon, that is taking advantage and exploiting if you will young people and members of the church and I respectfully move for a mistrial.

MR. LAWLER: Your Honor, I would further point out that most organized religions have doctrines that fall into this category. Certainly the Catholic Church in terms of the Pope issuing manifestos relating to a variety of different issues that command the Catholics to follow his teaching in this area and once we get into this particular area, it seems to me we are smack in the middle of freedom of religion and the right of a religious leader to speak to the people of his Church.

THE COURT: . . . the motion addressed to relevance is denied.

It goes to the witnesses' motivation for withholding evidence.

The motion addressed to the First Amendment is denied since the case necessarily requires such testimony.

> The motion for a mistrial is denied. However, I am concerned tht the prejudicial impact of the testimony may be exceeding its relevance. (TR. 4009-4010.) (Emphasis added.)

Ms. Harris, another Government attorney, continued Mr. Flumenbaum's line of questioning during the examination of Mr. Choi, also a Church member.

> Q: [MS. HARRIS] All right. My point is that your wife and you are one of the original 36 blessed couples in the Unification Church, correct?
>
> A: Yes.
>
> Q: That gives you a very special relationship with Reverend Moon, is that right?
>
> A: Yes.
>
> Q: You regard Reverend Moon as your true parent, is that right?
>
> MR. BAILOR: Objection.
>
> A: Yes.
>
> THE COURT: Sustained. (TR. 5676.)

Mr. Flumenbaum continued this line of questioning during the examination of Mrs. Hose -- another long-time member of the Unification Church.

> Q: You said that you were married in 1970?
>
> A: Right.
>
> Q: Who married you?
>
> * * *
>
> MR. LAWLER: I object to that, we are getting far afield.
>
> THE COURT: It depends on what the answer is.
>
> * * *

Q: Who performed the ceremony?

A: The ceremony was performed by Reverend Moon.

Q: Did Reverend Moon pick your spouse for you?

MR. LAWLER: Objection.

THE COURT: Come up to the side bar.

MR. LAWLER: Before Mr. Flumenbaum explains, I move for a mistrial.

THE COURT: Denied. I realize that this might have a slight amount of relevance to showing bias but it seems to me that it has a potential prejudice for far outweighing the reason for asking the question. Unless you know more about this than I do.

MR. FLUMENBAUM: Well, your Honor, it is important for the Government to impeach the credibility of these witnesses and show the bias and show the motive.

THE COURT: Do you have any actual knowledge that her husband was selected by Moon or are you just assuming this as he may have done it for others he did it for her?

MR. FLUMENBAUM: I don't have first-hand knowledge, but it is my understanding that he selects all the spouses.

MR. STILLMAN: That's not accurate.

THE COURT: For all the members?

MR. FLUMENBAUM: For all the members. And he matches them in their marriage ceremony in 1970 was a marriage -- it was I think 777 couples, they went to Korea I guess to be married, and it's a big honor. This was the third ceremony that he does. So she is very loyal, very dedicated. And the fact that she is married by him is of relevance.

* * *

MR. STILLMAN: In addition to that, your Honor, that is part of their theology. I don't see how we can go into that here --

MR. FLUEMENBAUM: Bias and motive.

MR. STILLMAN: It seems to me they are trying to poison this record with this kind of stuff.

* * *

MR. FLUMENBAUM: Your Honor, you have sustained an objection when Ms. Harris asked a question about the true parents.

THE COURT: For the same reason.

MR. FLUMENEAUM: Your Honor, again if this was a wife or a child of a defendant we would allowed to bring out that relationship.

* * *

MR. FLUMENBAUM: Can I ask her if she refers to him as her true parent?

THE COURT: No.

* * *

MR. FLUMENBAUM: It is not theological. It goes directly to bias and directly to motive to lie.[22]

THE COURT: No

MS. HARRIS: What about the leader, master, I mean we have to be able to bring out that relationship.

THE COURT: I don't mind your bringing out the relationship just keep away from theology.

MS. HARRIS: We are really trying to, we could ask questions like do you regard him as the messiah.

---

[22] Once again, the Government equated religious love and marriage with bias and lying.

THE COURT: Don't ask that.

* * *

MR. FLUMENBAUM: I think it is perfectly appropriate. (TR. 5718-5722.) (Emphasis added.)

Continuing with the cross examination of Ms. Hose, Mr. Flumenbaum asked:

Q: You refer to him as the leader or the master? The father?

A: Yes. I respect him very much.

Q: And am I correct that when he asked you to do something, you do it for him?

MR. LAWLER: Objection, your Honor.

* * *

THE COURT: I will allow that.

* * *

A: Depends on what he asked.

* * *

Q: Have you heard him state that members must be utterly obedient to him?

MR. LAWLER: Objection, your Honor.

* * *

THE COURT: I will allow it.

A: Yes.

Q: Have you heard him say that members cannot have a will other than his?

MR. LAWLER: Objection. (TR. 5723-5724.)

* * *

MR. FLUMENBAUM: . . . I think his statements are considered, the "Master Speaks," these are published statements by him, and they are distributed to the members and they respect him and hold him in such great stead that they think the jury can infer from the fact of the respect and the fact of this statement that the witness will follow that, no matter what she said on the stand.

MR. LAWLER: Your Honor, this is a criminal trial with witnesses testifying under oath. And the idea that in this religion or any religion where there may be doctrines of obedience which may relate to theological matters and abstract statements about the obligations of people who are participants to follow the guidance of the leaders with respect to these areas. Those two things should not be confused. . . . (TR. 5725-5726.) (Emphasis added.)

* * *

THE COURT: . . . I mean, taking a more concrete example that we are all familiar with, the Pope is believed to be infallible in matters of Catholic faith, but when he makes comments on the Polish situation or the Argentinia war and so on he is not speaking in the same context and consequently to try to couple his infallibility with his views on the Falkland Islands it seems to be a non-secular and it may be well to do so here. What are you proposing to put after?

MR. FLUMENBUAM: I was actually going to get into lying and cheating. (TR. 5727.)

Finally, during the Government's cross examination of Mr. Kim, a member of the Church for 28 years, Mr. Flumenbaum continued his previous line of questioning:

Q: And you refer to him as your Master?

MR. LAWLER: Objection, your Honor.

THE COURT: I will allow it.

Q: You refer to him as my Master when you talk to him?

A: My Master means teacher.

* * *

> Q: You refer to him as Father.
>
> A: Yes. Father in any organization even Catholic has a Father, Priest, he is a Father, nothing wrong with it.
>
> * * *
>
> Q: You believe he is a prophet? (TR. 5784-5785.)

During the Government's summation to the jury, Ms. Harris and Mr. Flumenbaum summarized their earlier questions regarding the motives of Church witnesses:

> MS. HARRIS: And we also said that it might be necessary for the Government to call reluctant witnesses, witnesses hostile to the Government. Witnesses' biased to the defendants. You have seen the case now and I am sure you understand why we warned you about these things. (TR. 6173.)
>
> * * *
>
> MR. FLUMENBAUM: What about the witnesses that we called who are controlled by Moon? Did they testify truthfully before you? (TR. 6498.) (Emphasis added.)

In stark contrast to the Government's criticism of the alleged motives and biases of current Church members, it was the testimony of a disaffected former Church member, Michael Warder, on behalf of the Government, which was relied upon in the Government's attempt to tie Reverend Moon to the alleged conspiracy in the indictment. On cross examination, however, it was brought out that such testimony was directly contrary to testimony given by Mr. Warder in an affidavit, as well as his testimony before the Grand Jury:

> Q: [MR. STILLMAN] When you gave the information, what you are telling us today that

> you were not accurate in the information you gave, is that it, sir?
>
> A: I lied.
>
> Q: You lied?
>
> A: Yes.
>
> Q: That is more accurate to say?
>
> A: Yes. (TR. 5230.)
>
> * * *
>
> Q: You understand, sir, did you not that when you signed that affidavit you swore to the truth of it, right?
>
> A: Right. (TR. 5230.)

Mr. Warder's credibility, accordingly, should have been subject to serious doubt.

It is critical, when considering Reverend Moon's involvement in, or knowledge of, either the alleged conspiracy or alleged tax fraud, to recount the testimony of Mr. Warder concerning his relationship with Reverend Moon. Mr. Warder's trial testimony regarding a conversation which he had with Reverend Moon in 1976, for example, was a critical aspect of the Government's case. His testimony before the Grand Jury though, was that he could not recall having a direct conversation with Reverend Moon. (TR. 5249-5250.) Similarly, even though Mr. Warder appeared to testify on behalf of the Government against Reverend Moon and the Unification Church, he unequivocally stated that Reverend Moon had never asked him to lie either during an earlier SEC investigation of the Church, or subsequently during the IRS investigation. With respect to the SEC investigation, Mr. Warder testified during cross examination as follows:

> Q: Did Reverend Moon ever tell you to lie about your SEC testimony, sir?
>
> A: No.
>
> Q: He knew you were going to testify before the SEC, did he not?
>
> A: I think he knew.
>
> Q: Didn't he say to you, sir, that he couldn't understand why you were being called?
>
> A: Yes.
>
> Q: Because it seemed to him that you didn't have any knowledge about those matters, right?
>
> A: Well, the problem I have with the question, if I could explain, I wasn't certain which investigation he said that about. . . . (TR. 5261-5262.)
>
> * * *
>
> Q Did he call you in and say, "Michael, here's what I want you to say to the SEC?"
>
> Did he do that?
>
> A: No.
>
> Q: If he had done it you would have lied for him, wouldn't you? If he had said to you, "Michael, go in and lie for me", you would have done it, wouldn't you?
>
> A: I think I probably would have.
>
> Q: The fact of the matter is he did not, isn't that correct?
>
> A: He did not, you are right. (TR. 5262; emphasis added.)

With respect to the Chase funds, Mr. Warder testified:

> Q: Did Reverend Moon ever come to you and say to you, "Now, Michael, in case you are asked about the Chase Manhattan Bank, here is what I want you to say about it?"
>
> MR. FLUMENBAUM: I object, asked and answered.
>
> THE COURT: Not about the Chase Bank.
>
> A: He never said that. (TR. 5266; emphasis added.)

Thus, despite Mr. Warder's testimony that he was intimately involved in the IRS investigation as it pertained to the disposition of the funds in the Chase Manhattan Bank account (TR. 5205), and despite the fact that he testified that he reported to Reverend Moon on a frequent basis during this time period (TR. 5186-5187), even Michael Warder had to admit that Reverend Moon never asked him to lie about anything having to do with the major subject of the Government's investigation -- the funds held in the Chase Manhattan Bank accounts in Reverend Moon's name.

Mr. Warder testified further, that during 1976 he also had a conversation with Mr. Kamiyama concerning the investment in Tong Il stock, a conversation heavily relied upon by the Government in support of its indictment of Mr. Kamiyama. Although he testified that at that time, he spoke to Mr. Kamiyama through an interpreter, he could not recall the particular translator (TR. 5293), and although Mr. Warder maintained detailed diaries and records which were turned over to the Government, and which would have revealed these conversations with Reverend Moon and Mr.

Kamiyama in 1976, only the diary for 1976 was not provided to the Government. (TR. 5294.)

Counsel for Reverend Moon questioned Mr. Warder as to these diaries:

> Q: After you gave them everything that you were able to find, did they ever ask you to go back and look for a 1976 diary?
>
> A: No. They [the Government] didn't say that. Or ask that. (TR. 5294-5295.)

It is astounding that this evidence was not requested, if in fact the Government was truly interested in a fair determination of guilt or innocence. The Government's failure to pursue this matter must be viewed in context of its extraordinarily detailed research in this case.

Mr. Warder's credibility was further weakened by his assertion that when he left the Unification Church, he explained to his new employers at the Heritage Foundation that he had severed his "relationship with Moon and with the church and with any of the other related business organizations." (TR. 5232.) Evidence was introduced during the trial, however, which indicated that on December 9, 1980, Mr. Warder, in an attempt to obtain assistance in finding a new position, cited the Department of Justice as an affirmative reference:

> The other more obvious liability to my doing anything in the public sector is my past association with Moon. It has been a year since I left that organization and the Justice Department is well informed of where my loyalties lie on that score. Still, my past associations are a factor. (DX. 3125.) (Emphasis added.)

During Mr. Flumenbaum's summation, after emphasizing that the Church members who testified on behalf of the defense were controlled by Reverend Moon, Mr. Flumenbaum attempted to reestablish Mr. Warder's credibility as a former disaffected Church member, quoting the following statement made by Mr. Warder in response to Government questioning:

> Since I have left the church I no longer consider that to be the standard of what's good and I accept authority of the court and the government as an arbitrator of right and wrong on other things and the truth. (TR. 6505.)

Under the Government's theory of this case, only those witnesses who were no longer associated with the Church could be relied upon for truthful, unbiased answers. According to the Government, only these witnesses, regardless of their recent history of false swearing, had not been affected by the alleged mind control techniques of the Church or the intense loyalty of Church members to Reverend Moon. The jury, in finding Reverend Moon guilty, apparently acceded to the Government's request that they accept the testimony of Michael Warder, whose conscience had obviously been restored -- after leaving the "control" of the Church and after obtaining a new job in the private sector following his cooperation with the Justice Department. This testimony was accepted despite Mr. Warder's admitted lies during his previous testimony.

3. The Government Introduced Irrelevant and Highly Prejudicial Evidence In Order to Support the Vague and General Conspiracy Alleged in the Indictment.

The foregoing testimony and evidence relating to the status of the Unification Church was not only highly prejudicial, but was also completely irrelevant in terms of the substantive charges against Reverend Moon. The Government, however, introduced such evidence pertaining to the theology and business practices of the church on the ground that such information was relevant to the general conspiracy alleged in the indictment. [23/] Significantly, the superseding indictment's conspiracy count related primarily to allegations against Takeru Kamiyama ("Mr. Kamiyama"), Reverend Moon's co-defendant and principal financial adviser during the time period addressed in the indictment. Precisely because of the potential prejudicial impact of such allegations upon Reverend Moon's case, a motion for severance was submitted to the Court. This motion, however, was subsequently denied. As a result, the Government's case against Mr. Kamiyama was utilized as a pretext for the introduction of irrelevant and damaging

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[23/] The various issues arising from the contemporaneous prosecution of Mr. Kamiyama are fully analyzed in the Supplemental Comments submitted on behalf of the Unification Church of America by Mr. Kamiyama's attorneys, Barry A. Fisher and Robert C. Moest.

"evidence" concerning the religious principles of Reverend Moon and the Unification Church.

Both the conspiracy count and several of the substantive counts against Mr. Kamiyama, pertain to Mr. Kamiyama's testimony before the Grand Jury which voted the indictment in this case. That indictment included charges that Mr. Kamiyama willfully perjured himself in response to several questions posed by the Government during his Grand Jury testimony. At the time Mr. Kamiyama appeared before the Grand Jury, he did not speak English. Consequently, the prosecutor's questions were translated for Mr. Kamiyama by a Government appointed interpreter who subsequently translated Mr. Kamiyama's answers from Japanese back into English.

After the original indictment was voted against Reverend Moon and Mr. Kamiyama, counsel for Mr. Kamiyama filed a motion to dismiss the indictment, on the ground that the Government appointed translator had inaccurately translated the prosecutor's questions, as well as Mr. Kamiyama's responses. The motion specifically asserted that Mr. Kamiyama had not only been responding to different questions than had been posed by the prosecutor, but also that his answers had been improperly characterized before the Grand Jury. In response to Mr. Kamiyama's motion, the Government deleted some of the allegations under the perjury counts, while leaving the major counts virtually intact. Mr. Kamiyama's motion to dismiss, was denied.

The significance of these alleged translation errors is self-evident, in that the precise content of each question and answer is critical to a charge of willful perjury. The allegations of inaccuracy raised in Mr. Kamiyama's case, however, were never conclusively resolved. Thus, while the trial court appointed its own independent translator (TR. 6541-6542), the independent translator's corrections were never incorporated within a new indictment, nor were the Government's voluntary corrections to the superseding indictment adequate to cure the prejudicial impact of the perjury charges.

In addition to these translation errors, the Government controlled the Grand Jury investigation in an essentially unfair manner. Thus, although Mr. Kamiyama did not speak English and did not have his own attorney present during his Grand Jury testimony, and although Mr. Kamiyama was asked to testify as to detailed matters which had occurred almost eight years before, the Government intentionally did not provide him with copies of documents for him to verify. (P128-133.) Further, Mr. Kamiyama testified for a total of three days. On the second day of his testimony, he appeared before a Grand Jury other than the Special Investigating Grand Jury. The transcript of that testimony was subsequently read to the Grand Jury which actually issued the superseding indictment. Although the testimony Mr. Kamiyama gave on the second day pertained to significant sections of the perjury counts, the Grand Jury which issued the indictment was not present to observe his demeanor or to make an accurate assessment of his credibility. Significantly, the prosecutor himself stressed the issue of credibility with respect to Mr. Kamiyama's Grand Jury testimony. (TR. 423.) Defense counsel learned at the end of the trial that the prosecutor, Mr. Flumenbaum, was responsible for scheduling Mr. Kamiyama's testimony on the second day. At that time, Mr. Flumenbaum knew that the investigating Grand Jury was not in session. Nevertheless, Mr. Flumenbaum instructed the foreman to recall Mr. Kamiyama on that date.

More generally, the Government's "bad man" theory of this case [24] can be detected in the prosecutor's questioning of Mr. Kamiyama:

> Q: Did Reverend Moon ever write any portion of the checks on the Chase Manhattan account other than his signature?

---

[24] The following exchange is illustrative:

> THE COURT: The picture the jury could draw is that everybody else is working for nothing, just for the benefit of the church, but that the Reverend Moon is running the whole business for his own benefit since he is the only one keeping his salary out of it.
>
> Whether that is a justified inference or an unjustified one, it is a permissible one and it seems to me consistent with the Government's theory of the case.
>
> MR. STILLMAN: Where is the part of this indictment that this ties to other than some kind of bad man theory?

> A: He never wrote anything other than his signature as far as I remember.
>
> Q: So, to your knowledge, he never wrote anything but the signature, is that correct?
>
> A: To the best of my knowledge Reverend Moon never affixed anything, other than the signature in the books, in the check.

This response was alleged to be perjurious under Count Ten, paragraph 31, of the superseding indictment.

In this particular instance, there was no direct evidence that Mr. Kamiyama ever saw Reverend Moon write anything other than his own signature, or that this occurred under circumstances which Mr. Kamiyama would have reasonably been aware of. Despite the fact that the Government had checks which Mr. Kamiyama could have identified, the Government did not show those checks to Mr. Kamiyama. (P133.) It preferred, rather, to question him with regard to events which occurred nearly eight years before, through a Government translator whose subsequent accuracy was subject to serious dispute. More fundamentally, however, a perjurious response must constitute a willful misstatement of fact. Mr. Kamiyama's qualifing statements, such as, "as far as I remember" and "to the best of my knowledge," should have prevented his responses from being construed as perjurious.

Similarly, it should be emphasized that the most damaging evidence presented against Mr. Kamiyama in support of the perjury counts, was the testimony of Michael Warder.

As noted earlier, Mr. Warder's trial testimony directly conflicted with his prior testimony before the Grand Jury. Mr. Warder's statements moreover, could not be confirmed by detailed diary entries which he kept, because his diary for 1976 -- the most relevant year for purposes of the conspiracy prosecution, was not provided to the Government. (TR. 5294.) At no point, moreover, did the Government attempt to locate such evidence. (TR. 5294.) Also detracting from Mr. Warder's credibility, was his inability to recall the name of the interpreter who was present during the conversations with Mr. Kamiyama cited by the Government in support of the perjury counts against Mr. Kamiyama. (TR. 5293.) The Government's zealous use of this discredited testimony stands in sharp contrast to its warnings to the jury concerning the credibility of witnesses "controlled" by Reverend Moon. (TR. 6173, 6498.)

Finally, at the conclusion of the trial, the court advised the jury that because of the nature of simultanaous translation, it could be expected that an interpreter who had several days to prepare translations would have an advantage in terms of accuracy. Nevertheless, the Court stated that the Grand Jury's translator had the benefit of hearing words which were inaudible on the Government's tapes of the Grand Jury proceedings, concluding that although the Court appointed translator's corrected version was available to the Grand Jury, the Court would not necessarily recommend that they review it. [25] The Court thus minimized the very real problems which had been raised by counsel for

---

[25] TR. 6541-6543:

> . . . [L]et me mention to you that in the course of ruling on the motions concerning the translation, I had a Court translator appointed and that translator made an official translation for the Court as to what occurred in the grand jury. Needless to say, that is a far more accurate translation than the contemporaneous running translation that was made by an interpreter in the jury.
>
> I think you will understand that somebody sitting down and listening to and studying for a period of time the translation involved can come up with a much more complete and accurate translation than can somebody who is making a simultaneous translation immediately before the jury.
>
> In one regard, however, the interpretation in the grand jury is better than the Court appointed translation, and that is that the interpreter on the scene was able to hear things that on the tape the Court appointed translator couldn't pick up, so the Court appointed translator has got some inaudibles where the translator in the court made translations.
>
> I should also tell you that translations, particularly from the English to the Japanese and back from Japanese to English, is not an exact science. These are two linguistic systems with uncommon basis. There is a good deal of discretion in going about translating a phrase in order to convey the meaning.
>
> The Court translation is available and should you want to see it, you may ask for it. I do not suggest to you that it necessarily has any importance in the case.

Mr. Kamiyama in relation to Mr. Kamiyama's inability to speak English and the general incompetence of the Government appointed translator. The Government, however, consistently utilized the various problems posed by Mr. Kamiyama's inability to speak English in order to develop a broad conspiracy charge, and used the substantive counts against Mr. Kamiyama as a conduit for the introduction of highly prejudicial and irrelevant evidence supporting its theory that Reverend Moon was a businessman, not a religious leader, and that the Unification Church was not in fact a genuine religious institution. The case against Mr. Kamiyama, accordingly, supports the conclusion that the proceedings in this action went substantially beyond a simple, narrowly focused tax prosecution.

4. The Government Convicted Reverend Moon on the Novel Theory That "If It Is Moon's Money and He Used All of It For the Church That Doesn't Make It Not His Money."

At the conclusion of the trial, in response to Reverend Moon's post-trial motions, the Trial Judge made the following comments:

> I received 50, perhaps a 100, letters from prominent church leaders, Protestant and Catholic Church leaders decrying the fact that a religious leader could be prosecuted for merely holding church funds in his own name. . . . What troubles me is that they all start on the assumption that the only evidence here was that the monies were in Moon's name and that he was a church leader, whereas in fact, as I told the jury and I will quote to you, the key issue is whether

> or not the bank accounts at the Chase Manhattan Bank and the Tong Il stock issued in Reverend Moon's name belonged to Reverend Moon. (S9-10.)

More recently, during the hearing on Reverend Moon's motion for a reduction in sentence, the Judge reiterated that:

> These funds and this stock, however, were clearly the personal possessions of Reverend Moon. . . . The jury determined that they belonged to Reverend Moon, and had I been given the facts, I would have made the same determination. (P. 25 to Hearing on Motion to Reduce Sentence, July 18, 1984.)

Unfortunately, these statements ignore the fact that throughout the trial, the Government presented the case to the jury on the theory that, regardless of whether or not the disputed funds were spent on genuine church-related projects, the mere fact that the funds were in the name and under the control of Reverend Moon (a matter not disputed by the defendants in this case), warranted the conclusion that the funds would still, as stated by the trial judge, "belong to Reverend Moon."

The presentation of the Government's case on this issue, is best described by the following remarks of the Government attorney in his summation to the jury:

> . . . Mr. Stillman said, look at how the money is used. And if you will recall in my opening thats exactly what I told you. Because the use of the funds is important. It really is important. It is one of many factors.
>
> However, as is probably obvious to all of you, the fact that if it is Moon's money and he used all of it for the church that doesn't make it not his money. So use is just one factor.
>
> The ownership can be determined from other factors as well. Use is not solely determinative.

> And you can see that in your own daily lives. If you use funds for a charity or for a project that you are interested in, that doesn't make the money not yours before you give it to them. . . . The fact that Moon uses the money for HSA (Holy Spirit Association) does not make the money not his. . . . The money is his, he has to pay the taxes on the money, so the fact that he reported just the personal expenses that he claims were personal doesn't mean that the money is not his. (TR. 6461-6463.) (Emphasis added.)

The most vivid example of the expansive nature of the Government's theory of taxability concerned a $250,000 contribution to the Korean Cultural and Freedom Foundation for the benefit of the "Little Angels of Korea Cultural Center," which was made from funds in the Chase Manhattan Bank accounts which the Government contended "belonged" to Reverend Moon. The following excerpt from the Government's own exhibit describes this organization:

> 1. The Little Angels of Korea
>
> Little Angels of Korea is a children's folk ballet company created as a cultural program of the Foundation in 1965. During the fiscal year 1974, the Little Angels Company performed in 78 cities in the United States and 23 countries in Europe and Asia.
>
> * * *
>
> 2. Children's Relief Fund
>
> The Children's Relief Fund was initiated to meet unmet needs of children in Asia. . . . During the 1974 fiscal year aid was . . . extended to . . . the Center of War Orphans, . . . the Children's Polio Service, and the Pediatrict Service of Hospital Mohasat, Vientiane. It came to the attention of the Foundation that a great need for medical attention and for medical

> information exists in villages of Southeast Asia. The villages of special need contain large numbers refugees, living in primitive conditions, and subject to diseases of hemorrhagic fever, milaria, typhoid, plague, cholera and acute dysentary, which cause a high death rate among children.
>
> * * *
>
> During the month of May 1974, a total of 4,220 people (2,443 children and 1,777 parents) were examined and treated in 23 villages.
>
> * * *
>
> 3. Radio of Free Asia
>
> Since its inception in 1966, Radio of Free Asia has been committed to serve people of Asia as a bridge between themselves and the United States and the Western World. In 1970 Radio of Free Asia began a series of programs to inform the people of North Vietnam of American and world opinion in respect of the treatment of release of American prisoners of war in Southeast Asia.
>
> * * *
>
> 4. Educational Scholarship Program
>
> During the fiscal year 1974, the Foundation has contributed to provide educational scholarships and grants to a number of worthy students here in America and in Korea for their pursuit of their studies in the field of the arts. (GX. 2702-2706.)

In its attempt to convince the Court that the contribution to the Little Angels from the Chase funds represented a personal expenditure on the part of Reverend Moon, the Government attorney stated:

> Now I agree with Mr. Stillman that the Little Angels may be a delightful cultural event and may bring a lot of pleasure to a lot of people and if Reverend Moon wants to spend his money helping the Little Angels that's fine if that's what he wants to do with it. If I want to give my money to the synagogue that's my personal business. But that

> doesn't mean that the money that I'm giving isn't my money. (TR. 5517-5518.)

In his summation to the jury Mr. Flumenbaum again stated his premise that Reverend Moon's involvement with the Little Angels was the result of his personal/business interest in the Foundation:

> We don't quarrel with the purpose of the loan. We told you in our opening that it was for the construction of this school for the Little Angels. And we told you and brought out through the business card that Moon was the founder of the Little Angels. . . . (TR. 6455.)
>
> Reverend Moon in his love of this program wants to stand as full-fledged guarantor. (TR. 6456.)

This characterization was directly contrary to the testimony of Mr. Pak, a close associate of Reverend Moon who testified on direct examination:

> Q: Will you tell the jury the relationship between the Little Angels School and the Unification Church?
>
> A: Legally they are separate organizations. However, the Little Angels Art School is part of the general education program of the Unification Church. (TR. 5596.)

Mr. Pak had testified earlier that the "construction of the school was under Reverend Moon's total spiritual guidance and cooperation based on a worldwide effort." (TR. 5594.) 26/

26/ On cross examination the Government again tried to establish that the Foundation was a business organization (Footnote Continued)

Consequently, the Government ignored direct testimony that the Little Angels Art School was a program of the Unification Church and that Reverend Moon disbursed funds to the School through the Korean Cultural and Freedom Foundation in his capacity as head of the Unification Church. The Government, moreover, presented this case to the jury in such a manner that even if the jury found that every dime of the Chase Manhattan funds had been directed toward Church activities, it nevertheless could have convicted Reverend Moon, finding that such funds "belonged" to him.

CONCLUSION

During the recent hearing on Reverend Moon's motion to reduce his prison sentence, the trial judge

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(Footnote Continued)
contolled by Reverend Moon:

> Q: Do you know who the Chairman of the Board of Directors of the Korean Cultural and Freedom Foundation was in the years 1971 through 1975?
>
> A: I cannot recall the details, but I understand that at the time of the establishment of the Foundation former Presidents Eisenhower and Truman served as advisers and they encouraged the establishment of the Foundation.
>
> Q: And did anyone tell Eisenhower and Truman that Reverend Moon was involved in this -- (TR. 5602-5603.)

questioned the reliability of Reverend Moon's attorneys' characterization of his trial:

> I find it difficult to understand how prominent, reliable religious leaders, columnists, public officials, could accept from his attorneys a view as to what the trial concerned, not having been present himself, not having read the transcript of the trial. In his recent plea to Congress that he was being prosecuted solely because of his religious views, he totally misstated what was involved in the prosectution. (p. 24, Hearing on Motions to Reduce Sentence, July 18, 1984.)

The extracts which have been included in these comments are intended primarily to demonstrate individual attitudes and prejudices relevant to the Subcommittee's inquiry regarding the present-day status of religious freedom in the United States. At the same time, however, we hope that this document may also shed light on many of the substantive issues which were addressed in the prosecution of Reverend Moon. It is our sincere belief that these comments fully support the conclusion that Reverend Moon was prosecuted solely because of his religious affiliation. Further, we believe that the tenor of the trial suggests that this was not simply a tax case involving an individual taxpayer, but rather a trial of the Unification Church, its beliefs, its religious principals, and its religious practices. The Church was tried and convicted through inflammatory appeals to the widespread negative preconceptions and biases existing against the Church in the

United States, as reflected through the jurors who were selected to hear this case.

In conclusion, therefore, we believe that these comments responsibly address the questions raised during this Subcommittee's hearing on June 26, 1984 concerning the fairness of the legal system in relation to the freedoms guaranteed by the First Amendment. The purpose of this document is not so much to allege and analyze structural prejudices within the system of American Justice as it is to document the very real and disconcerting denial of fundamental fairness to a major religious figure in the context of a specific Federal prosecution. It is our hope that these comments will foster further discussion and debate in the public interest with respect to the vital issues of religious freedom currently before the Subcommittee. If the Subcommittee finds, in fact, that the Unification Church was not accorded the full protection guaranteed by the Constitution, as we believe it will, we would sincerely recommend that a thorough examination be conducted of Government practices, as exemplified by Reverend Moon's indictment, trial and conviction.

Respectfully submitted,

Edward F. Canfield
Robert E. Heggestad
Mark S. Weiss

Counsel For the Unification
Church of America

August 13, 1984

Casey, Scott & Canfield, P.C.
Attorneys at Law

528 National Place
1331 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 783-6490

December 10, 1984

Honorable Orrin G. Hatch
Subcommittee on the Constitution
United States Senate Committee
on the Judiciary
Suite 135, Russell Building
Washington, D.C. 20510

Dear Mr. Chairman:

The enclosed comments are submitted on behalf of the Unification Church of America for inclusion in the permanent record made in connection with the Subcommittee's June 26, 1984 hearings concerning Religious Liberty in the United States. We request that these comments be accepted as a supplement to our written comments which were previously submitted on behalf of the Unification Church of America on August 15, 1984.

The August 15, 1984 submission contended that the prosecution of Reverend Moon's trial had been conducted in a fundamentally unfair manner and that the proceedings against Reverend Moon resulted in an attack upon the Unification Church itself, questioning both the validity of its theological tenets and the professed faith of its numerous adherents. These additional comments, which focus on the circumstances surrounding the prosecution of Reverend Moon's co-defendant, Takeru Kamiyama, lend further support to the disturbing conclusion that the criminal proceedings against Reverend Moon and Mr. Kamiyama failed to comport with minimal standards of moral and substantive justice. These comments lend credence to the conclusion that such proceedings were motivated and sustained whether consciously or not by the improper influence of religious intolerance and bigotry.

Mr. Kamiyama's conviction for false swearing was based, as discussed in these comments, upon a misinterpretation of both his testimony before the Grand Jury and the prosecutor's questions to Mr. Kamiyama in English. This misinterpretation was a direct result of the government's selection of an incompetent rather than a competent interpreter. Accordingly, we have also submitted for inclusion in the hearing record, a memorandum addressing the substantive requirements of the Court Interpreters Act, 28 U.S.C. §1827, et seq., and the applicability of the Act to the present case. We feel that Mr. Kamiyama and Reverend Moon would not have been indicted and prosecuted if a qualified Grand Jury interpreter had been retained and Mr. Kamiyama's testimony had been properly interpreted.

Finally, we wish to express our appreciation to both you and your staff, particularly Dee Benson, Esquire. The dedication of your office to the principles of the First Amendment and your practical assistance in our investigation of the Moon/Kamiyama prosecution are greatly appreciated. We are hopeful that these efforts will continue in order to ensure that Religious Liberty and the Constitutional Rights of both English and non-English speaking individuals will be protected.

Sincerely,

Edward F. Canfield

Edward F. Canfield

Oversight Hearing on Religious Liberty
Before the Subcommittee on the Constitution
United States Senate Committee on the Judiciary

* * *

SECOND SUPPLEMENTAL COMMENTS

ON BEHALF OF

THE UNIFICATION CHURCH OF AMERICA

Edward F. Canfield
Robert E. Heggestad
Mark S. Weiss

CASEY, SCOTT & CANFIELD, P.C.
1435 G Street, N.W., Suite 420
Washington, D.C. 20005
(202) 783-6490

For the Unification Church of America

December 10, 1984

TABLE OF CONTENTS

Page

INTRODUCTION 1

BACKGROUND AND SUMMARY 3

- A. The Interpreter Selected by the Prosecutor Was Not Qualified to Interpret Testimony Presented in Formal Grand Jury Proceedings 13
- B. The Prosecutor Proceeded With the Indictment and Prosecution of Mr. Kamiyama, Although He Was Aware That Mr. Mochizuki's Interpretation Did Not Accurately Reflect the Substance of Mr. Kamiyama's Testimony 26
  - 1. The Translation Prepared by the Government-Appointed Translator Clearly Indicated that Mr. Mochizuki's Interpretation Was Deficient in Several Major Respects. 27
  - 2. The Translation of Mr. Kamiyama's Testimony Prepared by the Court-Appointed Translator Put Mr. Flumenbaum on Notice That Mr. Mochizuki's Interpretation Was Inadequate 30
  - 3. The Government's Intentional Use of a Second Grand Jury to Hear a Significant Portion of Mr. Kamiyama's Testimony Precluded a Meaningful Decision by the Indicting Grand Jury Regarding Mr. Kamiyama's Credibility 34
- C. The Original Interpreter's Rendition of Mr. Kamiyama's Testimony Was Substantively Inaccurate and Inconsistent With Other Translations Prepared for the Government and the Court 39
  - 1. Oath 41

2. Fifth Amendment Warnings. 44

3. Perjury Warnings. 46

4. Indictment Specifications 50

  (a) Count Ten 50

  (b) Count Eleven 62

  (c) Count Twelve 67

  (d) Summary 68

D. The Additional Charges Resulting from the False Swearing Counts Permitted the Government to Expand the Scope of its Proof at Trial to Include Highly Inflammatory Material Concerning the Religious Practices of the Unification Church . . 69

E. The Government's Improper False Swearing Charges Against Mr. Kamiyama Were Supported With Equally Contrived Allegations Pertaining to Certain Church Financial Documents 74

1. The Tong Il Minutes Were Not Falsified 76

2. The Allegedly False Loan Agreements Reflected Actual Transactions . . . 78

3. The Family Fund Ledger Was Not Assembled in Order to Thwart the Government's Investigation. 80

F. The False Swearing and Obstruction of Justice and Conspiracy Charges Against Mr. Kamiyama Were the Decisive Factor in the Government's Decision to Prosecute Reverend Moon 87

G. Conclusion 91

Oversight Hearing on Religious Liberty
Before the Subcommittee on the Constitution
United States Senate Committee on the Judiciary

* * *

SECOND SUPPLEMENTAL COMMENTS
ON BEHALF OF
THE UNIFICATION CHURCH OF AMERICA

INTRODUCTION

This document is submitted to the Subcommittee as a supplement to certain written comments previously entered in the record on behalf of the Unification Church of America. Those comments, filed August 15, 1984, in response to an invitation extended by Senator Orrin G. Hatch at the conclusion of the Subcommittee's hearing on current issues in religious liberty, addressed the Federal tax prosecution of Reverend Sun Myung Moon ("Reverend Moon"), spiritual leader of the Unification Church of America and the worldwide Unification Church movement, and the implications which that prosecution held for the future of religious liberty in the United States. Based in part upon evidence of juror prejudice and prosecutorial misconduct, this initial submission asserted that Reverend Moon's prosecution had been handled in an unfair manner and that the proceedings against Reverend Moon resulted in an attack upon the Unification Church itself, questioning both the validity of its theological tenets and the professed faith of its numerous adherents. No information has been discovered to date which would contradict this impression. Such comments, accordingly, continue to reflect the viewpoint of the Unification Church of America.

Additional comment, however, is warranted by the circumstances surrounding the prosecution of Reverend Moon's co-defendant, Takeru Kamiyama ("Mr. Kamiyama"). Such circumstances lend further support to the disturbing conclusion that the criminal proceedings at issue herein failed to comport with minimal standards of normal and substantive justice and that these proceedings were motivated and sustained whether consciously or not by the improper influence of religious intolerance and bigotry. Mr. Kamiyama's prosecution appears to have ended in a broader effort to harrass and convict Reverend Moon. The charges leveled against Mr. Kamiyama, thus, provided a putative basis for the introduction of highly prejudicial evidence concerning the religious practices of the Unification Church at the parties' joint trial. In this manner, Mr. Kamiyama's ordeal directly involves the vital issues of religious freedom, constitutional right and proper functioning of the judicial system, which are the concern of this Subcommittee.

BACKGROUND AND SUMMARY

Takeru Kamiyama, whose prosecution is described in detail below, is and has been for some years, one of Reverend Moon's closest associates. A longstanding member of the Unification Church, [1] Mr. Kamiyama served as a financial adviser to the International Unification Church during the years covered by the Internal Revenue Service's Federal tax investigation and the prosecution described herein. [2]

Mr. Kamiyama is a native Japanese. At the time he arrived in the United States, [3] he could not speak English. He therefore managed the day to day administrative functions of the Unification Church with the aid of several American assistants. Similarly, at the time of his prosecution, Mr. Kamiyama could not communicate in English. Because of his extensive knowledge of the financial affairs of the

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[1] Before coming to the United States in November 1972, Mr. Kamiyama served on the Board of Directors of the Unification Church of Japan and held the position of Director of one of that organization's twelve geographical regions.

[2] I.e., 1973-75.

[3] See, note 1, supra.

Unification Church, however, Mr. Kamiyama was summoned before the Federal Grand Jury investigating the income tax practices of Reverend Moon, the Church's spiritual leader, in March, 1981. Although Mr. Kamiyama did not testify at that time, he did submit an affidavit to the Department of Justice, which detailed the manner in which funds were accumulated and disbursed in the context of various religious programs maintained by the Church.

Subsequently, on July 9, 1981, Mr. Kamiyama made his first appearance before the June 1980 Additional Grand Jury, sitting in the Southern District of New York. Mr. Kamiyama could not complete his testimony, however, and was instructed by the prosecutor to return on July 16, 1981, even though the prosecutor knew that the June 1980 Additional Grand Jury would be on vacation at that time. [4/] Mr. Kamiyama, accordingly, appeared for the second time on July 16, 1981 and testified before the July 1981 Regular Grand Jury. He completed his testimony, appearing for the third time, on July 21, before the July 1981 Regular Grand Jury during its morning session, and before the June, 1980 Additional Grand Jury that afternoon. Thereafter, on July 30, 1981 and August 11, 1981, the prosecutor, Mr. Martin Flumenbaum ("Mr. Flumenbaum") read Mr. Kamiyama's

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[4/] See Section B.3, infra.

transcribed testimony to the June 1980 Additional Grand Jury.

Mr. Kamiyama was indicted by the June 1980 Additional Grand Jury on October 15, 1981. In that original indictment he was charged, inter alia, with five counts of false swearing in violation of 18 U.S.C. §1623. [5/] Three of the five counts were based upon testimony before the July 1981 Regular Grand Jury.

Mr. Kamiyama was irreparably prejudiced by the prosecutor's simultaneous utilization of two different Grand Juries. As a result of this awkward and unnecessary [6/] practice the indicting Grand Jury did not have an opportunity to observe Mr. Kamiyama's demeanor.

Moreover, as noted above, Mr. Kamiyama could not speak English at the time of his Grand Jury appearances. His testimony, therefore, was not presented directly to the Grand Jury. Instead his testimony was interpreted by Mr. John Mochizuki, a Japanese-English interpreter retained by the Office of the United States Attorney for the Southern

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[5/] This indictment for false swearing in a foreign language is apparently unprecedented. The Church has been unable to locate any such prior cases. Indeed, even the Court conceded that the circumstances of Mr. Kamiyama's case were "unique." P. 310.

[6/] This procedure was unnecessary, because, as the prosecutor knew, the June 1980 Additional Grand Jury was scheduled to return shortly after July 16, 1981. See, p. 37-38, infra.

District of New York.[7] During this interpretation process, questions posed in English by the prosecuting attorney were interpreted into Japanese, and Mr. Kamiyama's responses in Japanese were subsequently interpreted back into English for consideration by the Grand Jury. In this manner, communication between Mr. Kamiyama and the prosecutor was totally dependent upon the skill and judgement of the interpreter, as was the Grand Jury's understanding of that communication.

From virtually the time the indictment was returned, counsel for Mr. Kamiyama objected to the utilization of Mr. Mochizuki's interpretation translation as the basis for the indictment's false swearing counts. These objections, reflected in Mr. Kamiyama's December 7, 1981 Motion to Dismiss the Indictment, were grounded upon an independent analysis of certain audio tapes of Mr. Kamiyama's Grand Jury testimony, made and preserved by the Government as the best evidence of his testimony.[8]

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[7] Mr. Mochizuki's methods and qualifications are analyzed in detail at Section A, infra. In addition, the inadequacy of Mr. Mochizuki's translation is examined at Section C, infra.

[8] The prosecutor insisted upon recording Mr. Kamiyama's Grand Jury testimony. Thus, on July 16, 1981, the prosecutor advised the Grand Jury:

> Just so that the record is clear, we are going to tape record in addition to having the Court

(Footnote Continued)

Such analysis revealed that the interpretation of the prosecutor's questions and Mr. Kamiyama's responses cited within the indictment contained numerous substantive errors which effectively altered the meaning of the dialogue presented to the Grand Jury. The prosecutor thus committed a serious error by proceeding against Mr. Kamiyama on the basis of the Grand Jury interpretation, without first attempting to analyze the audio tapes.

Apparently in response to Mr. Kamiyama's allegations of translation error, the Government retained an independent Japanese-English translator, Mr. Eisuke Sasagawa ("Mr. Sasagawa"), for the purpose of reviewing the aforesaid tapes. Mr. Sasagawa subsequently testified before the Grand Jury with respect to his translation analysis at least once, on December 15, 1981. 9/ However, because Mr. Sasagawa was

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(Footnote Continued)

> Stenographer here. We are going to tape record the witness' Japanese answers in the event -- so that in the event that those answers may become important at a future time, we will have the exact words that he said, in addition to the interpreter's interpretation of those words.

Copies of these audio tapes were made available to Mr. Kamiyama pursuant to Rule 16, Federal Rules of Criminal Procedure.

9/ Mr. Sasagawa's testimony on December 15, 1981 was based upon his review of selected portions of Mr. Kamiyama's testimony. Shortly thereafter, Mr. Sasagawa's review was extended to the entirety of Mr. Kamiyama's testimony. It is unclear, however, whether Mr. Sasagawa testified with regard to this more general analysis.

retained only after Mr. Kamiyama's December 7, 1981 Motion to Dismiss the Indictment, he had less than seven days to review the tapes prior to his Grand Jury appearance. Obviously, due to the time constraints imposed upon him by the Government, he could not have completed a comprehensive translation analysis prior to his testimony. The Government thus compounded its initial error of proceeding with Mr. Kamiyama's prosecution without first confirming the accuracy of the Grand Jury interpretation.

On the basis of Mr. Sasagawa's partial review of the Grand Jury tapes, the Government deleted certain specifications contained within the perjury counts and altered others in order to form a superseding indictment, which was returned on December 15, 1981. The prosecutor, however, did not present all of Mr. Sasagawa's evidence concerning material interpretation errors to the Grand Jury. The Grand Jury, consequently, was not informed that the testimony which it observed, and especially that which was read to it -- where it did not have an opportunity to observe Mr. Kamiyama's demeanor -- was incorrect. The superseding indictment, moreover, failed to reflect many of the changes which the prosecutor told the Grand Jury he would make, and where it did so reflect such promised changes, the net effect was to render Mr. Kamiyama's statements ambiguous or inaccurate by removing them from their natural context. Significantly though, the prosecutor repeatedly told the Grand Jury on December 15, 1981 that the original interpreter had performed competently and that his interpretation had been substantively correct.

Essentially then, in an area of criminal law where exacting precision is required, Mr. Kamiyama was indicted for false swearing on the basis of a grossly inaccurate interpretation. The Government, moreover, actively misled the Grand Jury by deleting statements favorable to Mr. Kamiyama from the indictment and leaving statements favorable to the prosecution intact. Thus, the superseding indictment was returned by a misinformed Grand Jury and incorporated numerous substantive errors which remained uncorrected.

Subsequent to December 15, 1981, Mr. Sasagawa performed an extensive analysis of the audio tapes, and prepared a written report for the prosecutor, detailing various errors which he detected in the original interpretation of Mr. Kamiyama's Grand Jury testimony. The interpretation anomalies cited by Mr. Sasagawa, like those detected by Mr. Kamiyama's independent analyst, were numerous and material, and reflected an inaccurate and oft-times incomprehensible rendition of the parties' statements. In particular, Mr. Sasagawa informed the prosecution that a valid oath had not been administered to Mr. Kamiyama because of the severe translation errors introducted by the Grand Jury interpreter. [10] However, even when confronted with the utter incompetence of its interpreter, manifestly demonstrated by Mr. Sasagawa's report, the Government withheld this evidence from Mr. Kamiyama, the Grand Jury and the trial jury. [11]

The blatant inadequacy of the alterations to the perjury counts contained within the December 15, 1981 superseding indictment is reflected in the Trial Court's Order of March 12, 1982, dismissing three specifications under Count Twelve, on the ground that the English statements set forth in the indictment varied substantially from Mr. Kamiyama's actual testimony in Japanese. This action was based upon a translation prepared for the court by Ms. Michiko Kosaka ("Ms. Kosaka"). The Court ordered alterations to the superseding indictment, however, were far from adequate in light of the pervasive misinterpretation of Mr. Kamiyama's testimony revealed by Ms. Kosaka's translation and Mr. Sasagawa's report. Count Twelve, in fact, should have been dismissed in its entirety, as should have the remainder of the perjury counts. As a result of the Sasagawa and Kosaka reports, the basis for the prosecutor's frequent assertions before the Grand Jury that Mr. Mochizuki was qualified, was itself completely undermined. The Government, however, proceeded with its prosecution of Mr. Kamiyama, knowing that it was based upon a grossly incompetent and inadequate interpretation; that Mr. Kamiyama, accordingly, did not testify falsely; and that Mr. Kamiyama was not properly sworn.

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[10] Significantly, a false swearing conviction may not be sustained in the absence of a valid oath. United States v. Whimpy, 531 F.2d 768, 770 (10th Cir. 1978). One cannot give testimony, much less false testimony, unless properly sworn as a witness. United States v. Fiore, 443 F.2d 112, 115 (2d Cir. 1971).

[11] The prosecutor's determination to pursue criminal proceedings against Reverend Moon and Mr. Kamiyama is reflected in certain comments to Justice Department colleagues:

> "[Mr.] Mark Pomerantz [an Assistant United States attorney] remembers that when the prosecutors returned from a trip to the Justice Department in Washington to argue for authorization on the Moon indictment, Flumenbaum turned down a ride back to the New York courthouse from the airport this way: "If they don't want to authorize prosecution, I'll take the subway back to Paul, Weiss." [I.e., his prior employer.]

See, American Lawyer, November, 1982.

It should also be noted in this regard that the prosecution initially agreed to accept Ms. Kosaka's translation as the basis for its presentation to the trial jury. Near the end of the trial, however, the Government reneged on its commitment and read the original inaccurate consecutive interpretation to the jury. [12]

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[12] See, Section B.2, infra.

Thus, as discussed more fully below, Mr. Kamiyama did not testify falsely before the Grand Jury in violation of 18 U.S.C. §1623. The Government, rather, invited error and misunderstanding as a result of its selection of a patently unqualified interpreter. When such misunderstanding inevitably occurred, the Government characterized the subject testimony as perjurious and utilized such charges as a pretext for the assertion of a conspiracy count against both Reverend Moon and Mr. Kamiyama, through which the prosecution brought highly prejudicial "evidence" of the religious practices of the Unification Church before the trial jury. The prosecutor had actual notice long before trial that the interpretation which served as the foundation for the indictment was substantively incorrect. No action was taken to protect Mr. Kamiyama's rights, however, and indeed, the Grand Jury, Court and trial jury were misled in turn with respect to the quality of the evidence supporting the charges against Mr. Kamiyama. These contrived charges against Mr. Kamiyama, moreover, in addition to charges of obstruction of justice, based upon certain allegedly false documents which had been submitted to the Justice Department, 13/ were the decisive

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13/ See, Section E, infra. The Government never introduced evidence to the effect that these documents were substantively incorrect or misleading. The prosecution
(Footnote Continued)

factor in the Government's decision to prosecute Reverend Moon after senior Justice Department officials had decided against prosecution. Needless to say, such conduct cannot be condoned by any society devoted to the rule of law. [14]

A. The Interpreter Selected by the Prosecutor Was Not Qualified to Interpret Testimony Presented in Formal Grand Jury Proceedings.

During Mr. Kamiyama's July, 1981 appearances before the Grand Jury, his testimony, as noted above, was interpreted by Mr. John Mochizuki ("Mr. Mochizuki"), a Japanese-English interpreter retained by the Office of the Prosecutor. Mr. Mochizuki interpreted the prosecutor's questions into Japanese and Mr. Kamiyama's responses from Japanese into English. Mr. Kamiyama, however, was not permitted to have his own personal interpreter, or his attorney present in the Grand Jury room during his testimony. Significantly, the questions posed to

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(Footnote Continued)
merely presented evidence demonstrating that the documents were backdated. The defendant's openly acknowledged, however, that the materials were reconstructed. Indeed, Mr. Kamiyama acknowledged before the Grand Jury that certain documents were backdated. The Government did not dispute the fact, moreover, that the events memoralized by the documents did in fact occur.

[14] As noted by Mr. Justice Brandeis in Olmstead v. United States, 277 U.S. 438, 479 (1929): "The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding." Indeed, this case has been characterized as "politically charged." See, U.S. News & World Report, Nov. 12, 1984 at 25.

Mr. Kamiyama primarily concerned events which had transpired almost eight years before.

Based on the Mochizuki interpretation of Mr. Kamiyama's testimony, the Grand Jury returned an indictment which charged Mr. Kamiyama with several counts of perjury. Each of the perjury counts in the indictment contained extracts from Mr. Kamiyama's testimony, with the prosecutor's questions and Mr. Kamiyama's responses quoted in each specification. The statements which the Government alleged to be perjurious were underscored in the indictment.

A review of Mr. Mochizuki's interpretation of Mr. Kamiyama's Grand Jury testimony, which, as discussed below, 15/ was replete with errors, supports the conclusion that this interpreter, selected by the Government, was not qualified to interpret testimony in a formal Grand Jury setting. Because Mr. Kamiyama was a subject of the Grand Jury's investigation at the time he testified, moreover, and because the interpretation of his testimony was subsequently used as the basis for a perjury indictment, Mr. Mochizuki's fitness for interpretation under the formal conditions of a Grand Jury proceeding was a matter of vital importance. 16/

15/ See, Section C, infra.

16/ Mr. Kamiyama was notified in March, 1981, that he was a target of the Grand Jury investigation.

The conclusion that Mr. Mochizuki, was not qualified to perform interpretation in a formal Grand Jury proceeding where witnesses are under investigation, is warranted in view of the qualifications required for interpreters used in judicial proceedings under the Court Interpreters Act, Pub. L. No. 95-539, 92 Stat. 2040 (1978), 28 U.S.C. 1827 et seq. ("the Act"). 17/ Although the Act was adopted in 1978 in order to establish a program to facilitate the use of interpreters in Federal court, 28 U.S.C 1827(a), and to ensure that only qualified

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17/ See, Exhibit A. Neither the language of the Act itself nor its legislative history clearly indicate whether the Court Interpreters Act was intended to apply to Grand Jury proceedings. However, to the extent that Grand Jury proceedings are clearly subject to the supervision of the Court, and have been held to be an appendage of the Court, rather than a part of the Executive Department, it can properly be argued that Grand Jury proceedings were intended to be subject to the provisions of the Act. The ability of the Grand Jury to issue an indictment allowing the Government to prosecute a defendant, together with the requirement that a Grand Jury interpreter be selected by the prosecutor rather than a potential defendant, are important factors which weigh in favor of a liberal construction of the Act. In view of these factors and the express remedial purpose of the Act, a potential defendant appearing before a Grand Jury who cannot speak English should be accorded the right to have his testimony translated by an interpreter who would be qualified to perform during any subsequent trial. A contrary interpretation of the Act would subject non-English speaking persons to "an open and public accusation of crime, and [to] the trouble, expense, and anxiety of a public trial before . . . probable cause is established by presentment and indictment." Jones v. Robbins, 74 Mass. (8 Gray) 329 (1857). See, legislative history of the Court Interpreters Act of 1978 at 1978 U.S. Code Congressional and Administrative News, P. 4655, attached hereto as Exhibit B.

interpreters are used in judicial proceedings initiated by the Government (H.R. Rep. No. 1687, 95th Cong., 2d Sess. 4 (1978), a program to certify Japanese language interpreters had not been implemented at the time of Mr. Kamiyama's Grand Jury appearances in 1981. Such a certification program, moreover, has not yet been implemented today, almost six years after passage of the Act. The only certification program which has been established to date is that for Spanish language interpreters, under a test developed shortly after passage of the Act. [18]

Certification under the program adopted by the Administrative Office of the United States Courts requires that interpreters for non-English speaking witnesses be capable of performing both consecutive and simultaneous interpretation. The interpretation capacity required under the Court Interpreters Act is thus most comparable to the qualifications mandated for "conference" level interpreters by the State Department. [19] Mr. Mochizuki, however, was not qualified to perform conference level interpretation and would not have been qualified as an interpreter for judicial proceedings in accordance with the standards implemented under the Act.

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[18] The Court Interpreter's Act, for that matter, is still administered under "temporary" regulations first promulgated on January 22, 1979.

[19] See, pp. 16-17, infra. See also, Affidavit of Robert E. Heggestad detailing an interview with Mr. J. Leeth of the Administrative Office of the United States Courts, attached hereto as Exhibit C.

Mr. Mochizuki's was certified as an "escort" level interpreter by the State Department on November 1, 1977. [20] The difference between the State Department's standards for "escort" level interpreters such as Mr. Mochizuki, and "conference" level interpreters, is quite significant in the context of judicial or legal proceedings. The test administered by the State Department for conference level interpretation requires an aptitude for simultaneous interpretation. Because simultaneous interpretation is performed as the words are spoken, the test for conference level interpretation is far more difficult than the test for escort level interpretation. Conference level interpretation, as the name implies, is used primarily during important international negotiations, conferences and seminars. Thus, unlike escort level interpretation, conference level interpretation requires that each word spoken be correctly interpreted. [21]

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[20] The State Department classifies interpreters according to three levels of demonstrated competence: "tour guide" interpretation; "escort" interpretation; and "conference" interpretation. Within this gradation, "conference" level interpretation is by far the the most sophisticated and difficult. See Affidavit of Robert E. Heggestad, attached hereto as Exhibit D, detailing an interview with Mr. Manabu Fukuda, a Japanese-English interpreter employed by the Interpreting Branch of the Language Services Division of the United States Department of State.

Escort level interpretation requires only that the interpreter be qualified to perform consecutive interpretation. Consecutive interpretation performed by an escort level interpreter is far less accurate than consecutive interpretation performed by a conference level interpreter. During consecutive interpretation performed by an escort level interpreter, the interpreter waits until a single sentence or several sentences have been spoken, and then, relying upon notes which he has taken, roughly summarizes the sentences. Although a consecutive method may also be used for conference level interpretation, conference level interpretation must reflect the exact words being interpreted, rather than a summary of what has been said. However, as is apparent from subsequent reconstructions of Mr. Kamiyama's testimony, Mr. Mochizuki was not even capable of rendering an adequate consecutive interpretation.

Significantly, Mr. Mochizuki would not have been retained to interpret the Grand Jury proceedings if the Justice Department had properly relied upon the Court Interpreter Services Office of the Administrative Office of the United States Courts. Mr. William E. Foley, Director of the Administrative Office of the United States Courts recently advised Congressman William R. Ratchford in response to an inquiry concerning Mr. Kamiyama's case, that the Administrative Office's Court Interpreters Section routinely selects only the most qualified interpreters for use in legal proceedings. Mr. Foley noted that these interpreters are normally "the same individuals who work at conferences for the Department of State or International Agencies." [22] Mr. Mochizuki, however, as noted above, has never been certified for interpretation at the conference level. Further, Mr. Mochizuki proved himself capable of rendering only a summary interpretation. The Court Interpreters Act and the regulations promulgated thereunder, though, specifically prohibit summary interpretation unless permitted by the "presiding judicial officer" with the consent of all parties. See, 28 U.S.C. §18.27(k); Subpart G §1.61(d) Temporary Regulations (as amended, September 28, 1979) ("The interpreter generally will not interpret judicial proceedings in the summary mode.") Consequently, it is inconceivable that he would have been selected for formal Grand Jury interpretation had the appropriate experts at the Court Interpreters Office been consulted. [23/]

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[21] See, Exhibit D, supra.

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[22] See letter of Congressman William R. Ratchford to Mr. Kamiyama, and letter of William E. Foley to Congressman Ratchford, attached hereto as Exhibits F and G, respectively. See also, letter of Congressman Ron Paul to Mr. Kamiyama, attached hereto as Exhibit H.

Even if Mr. Mochizuki had been retained under Court Interpreters Act standards, however, he would not have been permitted to continue interpreting under the circumstances of this case. Subpart D §1.35 of the regulations promulgated under the Act provides:

> If any interpreter is unable to communicate effectively with the presiding judicial officer, the United States Attorney, a party, or a witness, the presiding judicial officer shall dismiss the interpreter and obtain the services of another interpreter.

Interpreters retained in accordance with the Court Interpreters Act, therefore, must be dismissed if it becomes apparent that their interpretation is inaccurate. In the present case, the prosecutor was informed by Mr. Sasagawa and Ms. Kosaka that the Grand Jury interpreter was not performing in an adequate manner. Indeed, the Court dismissed several specifications of the indictment because of interpretation errors. If Court Interpreters Act standards had been applied, Mr. Mochizuki would have been replaced with a capable interpreter. The prejudice to Mr. Kamiyama from the Government's failure to adhere to these standards is manifest.

[23/] See Exhibit E, supra.

In July, 1981 when Mr. Mochizuki was retained by the Government to interpret Mr. Kamiyama's Grand Jury testimony, his services had been utilized by the State Department on only a limited basis. At that time, he had not been authorized to perform "conference" level interpretation for the State Department, nor had he applied to take the State Department's conference level test. If the prosecutor had made an effort to review Mr. Mochizuki's official credentials, he would have known that Mr. Mochizuki was not qualified to work in formal, highly technical proceedings, such as those before a Grand Jury. [24]

Furthermore, even though Mr. Mochizuki did not perform, and was not qualified to perform simultaneous interpretation, the prosecuting attorney and the Court incorrectly characterized his work as simultaneous interpretation before both the Grand Jury and the trial jury. Thus, on the day the Grand Jury returned the superseding indictment, the prosecutor presented Mr. Mochizuki's qualifications to the Grand Jury:

> Since the filing of the indictment, there have been certain contentions made that the transcription that is reflected by the Grand Jury reporter and what the simultaneous interpreter [Mr. Mochizuki] said was somewhat different than what Mr. Kamiyama said in Japanese. (Emphasis added.)

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[24] See Affidavit of Robert E. Heggestad, attached hereto as Exhibit E, detailing an interview with Ms. Dina Kohn,

(Footnote Continued)

Similarly, because of the questions which had been raised, the prosecutor explained that Mr. Sasagawa had been asked to reconstruct Mr. Kamiyama's testimony and to appear before the Grand Jury. Following Mr. Sasagawa's testimony, further questions were raised with regard to Mr. Mochizuki's qualifications:

> VOICE: Can you prove this interpreter is more qualified or more knowledgeable than the other one?
>
> You might need more interpreters to corroborate.
>
> MR. FLUMENBAUM: I think there is going to be a problem on the interpretation, no matter what it is. What you have to find, there is probable cause that the perjury was committed.
>
> I think based on Mr. Sasagawa's testimony, that the interpreter that was before the Grand Jury, apparently did a very credible job in terms of simultaneous translation.
>
> The changes, as you, yourself have noted, are very, very minor and very, very interpretive almost.
>
> As I think you have to make some sort of a judgment on Mr. Sasagawa's qualifications, he is Japanese. He lived there twenty-one years and he does do --
>
> A VOICE: To me he seems more credible than the other one.
>
> MR. FLUMENBAUM: You also have to realize the other interpreter was doing it simultaneously and didn't have the luxury of making a tape and backtracking --

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(Footnote Continued)
Director of the United States District Court Interpreter's Office for the Southern District of New York.

> A VOICE: A woman usually was here to interpret but wasn't. We had another man here.
>
> MR. FLUMENBAUM: *We had Mr. Mochizuki at that time who is qualified*, you know, interpreter. *He wouldn't be before you if he weren't*.
>
> As I said, *I think the changes that have been brought to you indicate that Mr. Mochizuki did a credible job in terms of interpreting the transcript*. (Emphasis added.)

During the January 15, 1982 hearing on Mr. Kamiyama's Motion to Dismiss the Indictment, Mr. Flumenbaum again described Mr. Mochizuki as a simultaneous interpreter:

> MR. FLUMENBAUM: *We certainly don't need someone who is a simultaneous interpreter as you had at the Grand Jury*. Mr. Lawler's suggested changes in the language are based on someone playing the tape, listening to it, going back, listening to it. That is not the luxury that the Grand Jury interpreter and indeed, based on the suggested differences, it is not clear that the Grand Jury interpreter did a superb job in translating what is not a language that translates directly. The whole phraseology is reversed in English. You can't translate word for word.

P. 122. (Emphasis added.) [25]

According to the translation which Mr. Sasagawa prepared for Mr. Flumenbaum, [26] the problems with the original consecutive interpretation were not minor, nor should Mr. Mochizuki have been characterized as a "qualified" interpreter. The Grand Jury, however, accepted Mr. Flumenbaum's assurance that Mr. Mochizuki was a qualified "simultaneous" interpreter, and proceeded to return a superseding indictment.

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[25] Citations to the record of the proceedings against Reverend Moon and Mr. Kamiyama will be denoted as follows: citations to pleadings and rulings, "A.__"; to pretrial transcripts, "P.__"; to trial transcripts, "T.__"; and to post-trial transcripts, "S.__"; and to Government Exhibits as "GX. __."

[26] *See*, Section C, *infra*.

The comments of the Court also reveal that Judge Goettel did not understand the difference between simultaneous interpretation and consecutive interpretation as performed by Mr. Mochizuki. Although Judge Goettel correctly noted that simultaneous interpretation should be required for courtroom proceedings, [27] he subsequently mischaracterized Mr. Mochizuki's interpretation as being simultaneous at the conclusion of the trial during his instructions to the jury:

> . . . in the course of ruling on the motions concerning the translation, I had a court translator appointed and that translator made an official translation for the court as to what occurred in the Grand Jury. Needless to say, that is a far more accurate translation than the

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[27] In discussing the proper qualifications for a court-appointed translator, Judge Goettel stated:

> For the courtroom you want somebody who can do pretty close to a simultaneous interpretation and has a good memory of what has been said and so forth whereas comparison for the accuracy of interpretation, given two alternatives, I think probably something in the nature of a linguistics scholar is more called for.

P. 43.

> contemporaneous running translation that was made by an interpreter in the jury. I think you will understand that somebody sitting down and listening to and studying for a period of time the translation involved can come up with a much more complete and accurate translation than can somebody who is making a simultaneous translation immediately before the jury. In one regard, however, the interpretation in the Grand Jury is better than the court appointed translation, and that is that the interpreter on the scene was able to hear things that on the tape the court-appointed translator couldn't pick up. So the court-appointed translator has got some inaudibles where the translator in the court made translations.

T. 6542.

Mr. Mochizuki was obviously not qualified to perform simultaneous interpretation, nor did he actually perform simultaneous interpretation during Mr. Kamiyama's Grand Jury testimony, as suggested by the prosecutor and the Court. Neither party, consequently, had an adequate understanding of the critical role played by the Grand Jury interpreter. As previously noted, simultaneous interpretation is performed at almost the same time, i.e., "simultaneously," as the words being translated are spoken. Because simultaneous interpretation requires that the interpreter hear the words and convey their meaning while other words are being spoken, simultaneous interpretation requires an unusually high level of competence. If done properly, simultaneous interpretation should constitute an exact word-for-word replication, not a mere summary of what was said.

Mr. Mochizuki, utilizing a consecutive method, listened to the words spoken, made fragmentary notations of those words, [28] and subsequently retranslated the questions or answers after they had been spoken. Mr. Mochizuki's interpretation, however, was replete with errors and unexplained omissions or embellishments. [29] In many instances Mr. Mochizuki attempted to summarize sentences, rather than interpreting Mr. Kamiyama's exact words. Such a summary should not serve as the basis for a perjury indictment, where every word of the defendant is critical.

B. The Prosecutor Proceeded With the Indictment and Prosecution of Mr. Kamiyama, Although He Was Aware That Mr. Mochizuki's Interpretation Did Not Accurately Reflect the Substance of Mr. Kamiyama's Testimony.

The Government's failure to retain a competent interpreter had a grave impact upon the outcome of Mr. Kamiyama's case. The prosecutor's adamant refusal to correct this error reflects the Government's intention to continue with the prosecution of Reverend Moon and Mr. Kamiyama irrespective of any injustice resulting from an incorrect interpretation.

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[28] Mr. Mochizuki made only partial notations of the prosecutor's questions because Mr. Flumenbaum spoke hurriedly and posed his questions in rapid succession. *See*, Affidavit of Takeru Kamiyama, attached hereto as Exhibit I.

[29] *See*, Section C, *infra*.

Even if one were to assume, however, that at the time of Mr. Kamiyama's Grand Jury testimony Mr. Flumenbaum was unaware of the fact that Mr. Mochizuki was qualified to perform only informal escort level interpretation, the inadequacy of Mr. Mochizuki's interpretation was subsequently brought to the prosecutor's attention. Mr. Flumenbaum was provided with translations prepared by Mr. Sasagawa, and by the Court-appointed translator, Ms. Kosaka.[30] Mr. Flumenbaum, however, disregarded Mr. Sasagawa's painstaking reconstruction and proceeded with his efforts to obtain an indictment charging Mr. Kamiyama with perjury. Further, after he successfully obtained an indictment and after he had received copies of Ms. Kosaka's translation and Mr. Sasagawa's complete report, Mr. Flumenbaum proceeded with the prosecution of Mr. Kamiyama, knowing that the translation contained within the indictment did not accurately reflect Mr. Kamiyama's testimony. This prosecution led to the conviction and imprisonment of both Reverend Moon and Mr. Kamiyama.

1. The Translation Prepared by the Government-Appointed Translator Clearly Indicated that Mr. Mochizuki's Interpretation Was Deficient in Several Major Respects.

On December 15, 1981, the prosecutor presented a superseding indictment to the Grand Jury which he characterized as correcting several "minor" errors in Mr. Mochizuki's interpretation. On the same day, Mr. Sasagawa appeared as a witness before the Grand Jury to testify with regard to the adequacy of Mr. Mochizuki's interpretation.[31] Although Mr. Kamiyama has not been permitted to review the transcript of Mr. Sasagawa's testimony, or the report which Mr. Sasagawa prepared for Mr. Flumenbaum, a copy of the transcript of the colloquy between Mr. Flumenbaum and the Grand Jury pertaining to Mr. Sasagawa's testimony was subsequently provided to counsel for Mr. Kamiyama -- Mr. Andrew Lawler ("Mr. Lawler"). Similarly, Mr. Sasagawa was interviewed in Tokyo, Japan on August 25, 1984, by Mrs. Kinko Sato ("Mrs. Sato"), a distinguished Japanese attorney.[32] These materials confirm that Mr. Mochizuki's errors were not, as characterized by the prosecutor, "very, very minor and very, very interpretative. . . ." [33]

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[30] A copy of this translation and Ms. Kosaka's notes to the Court are attached hereto as Exhibit J.

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[31] Mr. Flumenbaum did not disclose to Mr. Kamiyama that a translator had appeared before the Grand Jury. After the trial, however, Mr. Kamiyama inadvertently learned of Mr. Sasagawa's appearance and requested a transcript of his testimony, as well as a copy of a report which he had prepared for Mr. Flumenbaum. Both the Government and the Court refused to provide Mr. Kamiyama with these documents. See, Endorsement, March 10, 1983.

[32] Mrs. Sato's curriculum vitae is attached hereto as Exhibit K. In addition, a transcript of Mr. Sasagawa's interview is attached hereto as Exhibit L.

As analyzed below, [34] the errors in Mr. Mochizuki's interpretation went to the very core of the perjury charges. Moreover, Mr. Flumenbaum's efforts to convince the Grand Jury otherwise and his argument that Mr. Mochizuki was in fact a qualified interpreter, clearly misled the Grand Jury.

Further, the changes which were made to the superseding indictment unfairly prejudiced Mr. Kamiyama. Thus, specifications favorable to Mr. Kamiyama were intentionally deleted, despite the fact that these specifications were critically important in terms of placing other statements which remained in the indictment in a proper context. By contrast, translations which were clearly erroneous and confusing, but favorable to the Government, were left intact in the indictment, some with only the underscoring (indicating a perjurious statement) removed. As a result of these alterations, the indictment effectively placed Mr. Kamiyama's testimony in a misleading and inaccurate context. Although this problem was raised by

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[33] See, Section C, infra.

[34] Id.

Mr. Kamiyama on several occasions, Mr. Flumenbaum objected to any procedures which might have remedied the situation.

2. The Translation of Mr. Kamiyama's Testimony Prepared by the Court-Appointed Translator Put Mr. Flumenbaum On Notice That Mr. Mochizuki's Interpretation Was Inadequate.

In response to Mr. Kamiyama's Motion to Dismiss the Indictment, the Government stated that it would not object to the use of a court-appointed "independent" Japanese translator to resolve issues pertaining to the disputed portions of Mr. Mochizuki's interpretation. Mr. Flumenbaum noted that it was "not the intention of the Government to prosecute Mr. Kamiyama for something which he, in fact, did not say. . . ." Affidavit of Martin Flumenbaum, January 1982 (A. 555). Ms. Kosaka's subsequent translation of Mr. Kamiyama's testimony revealed that Mr. Mochizuki's interpretation contained numerous errors, omissions and deletions. [35] Thus, following a discussion of these mistakes during the hearing on Mr. Kamiyama's Motion to Dismiss the Indictment, the prosecutor agreed that the court-appointed translator's version of Mr. Kamiyama's testimony "would be put in the part [sic] as the

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[35] See, Section C, infra.

Government's case on the perjury count." [36] Ms. Kosaka's translation, however, was never presented to the jury as agreed.

Despite Mr. Flumenbaum's representation to the Court that he would accept the Kosaka translation as the basis for the presentation of the false swearing counts to the trial jury, Mr. Lawler's effort at the end of the trial to have the court-appointed translator's reconstruction considered by the jury, was opposed by the prosecution:

> MR. FLUMENBAUM: My understanding of that conference and decision was that your Honor for purposes of that motion took the Court interpreter's version as being a standard upon which we could compare what took place in the grand jury. Your Honor, then made a legal determination as to whether the word changes were of any material variance.
>
> THE COURT: All that is correct. But then I went a further step and said what are you going to do at trial? . . . I asked you whether you agreed

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[36] THE COURT: But I am still asking you what are we going to do with the official court translator's translation? Is either side going to use it, and if so, how?

MR. LAWLER: We have indicated that for the purposes of this motion, we are prepared to accept that translation. . . . I guess my interpretation was that by agreeing for purposes of this motion that I was also agreeing that that would be the translation which would be put in the part as the Government's case on the perjury count.

THE COURT: Do you agree with that?

MR. FLUMENBAUM: That's right, your Honor.

P. 302-303. (Emphasis added.)

> with that and you said that's right but you didn't do that.[37/]
>
> * * *
>
> MR. FLUMENBAUM: There certainly would not be any indication that we would put in as part of the court-appointed translator's items which were not part of the indictment. I can't believe that that could have been Mr. Lawler's understanding. We are only talking in terms of what was in the indictment. The reason that that was taken out was because Mr. Lawler had originally challenged the original indictment because of the fact that there was a difference in the translations.

T. 6091. Shortly thereafter, another prosecution attorney, Ms. Jo Ann Harris ("Ms. Harris"), also objected to the use of Ms. Kosaka's translation:

> MS. HARRIS: Your Honor, at this point we object, I mean we laid out exactly how we were going to present this to the jury in our case. I walked over there -- I read -- I was using the indictment that Mr. Lawler had agreed that I could use the indictment to do it. . . . I had already warned everybody that I was going to say that and I read it. If there was going to be an issue at all I should think that it ought to have been brought into the case when Mr. Lawler had his chance and that he really ought to be precluded from doing it now. It just fogs up this record for no good reason at all. (Emphasis added.)

T. 6138-6139.

Mr. Kamiyama's attorney subsequently reiterated his request that the more accurate translation be placed before the jury:

> MR. LAWLER: I want the more accurate translation before this jury. The whole purpose of the court-appointed translator and the subject

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[37/] *See*, note 35, *supra*.

> of the proposed hearing was to get the most accurate version and that is what I thought we had agreed upon to avoid the hearing that both sides were in agreement that this was the translation that would be used. (Emphasis added.)

T. 6149. The Court reached the following decision:

> THE COURT: If we get to the point of giving them the official court translation and explain to them why it was done, then I will explain why the additional indictment resulted, because it is based upon a more accurate translation. That will cover that.

T. 6153.

After Mr. Flumenbaum objected to including Ms. Kosaka's translation with the indictment that would go to the jury, Mr. Kamiyama's attorney asked the Court how it would instruct the jury on the question of the court-authorized translation:

> THE COURT: I am going to tell them how it came to exist and why it exists and the fact that it is available to look at if they wish to.

Subsequently in his instructions to the jury on Count Ten, Judge Goettel read directly from the superseding indictment, omitting those questions and answers which would have explained other statements made by Mr. Kamiyama. [38]/ As discussed earlier, in his instructions to the jury, Judge

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[38]/ E.g., that Mr. Kamiyama did not personally prepare all of Reverend Moon's checks himself. (T. 6621-6623.) Judge Goettel also read Mr. Flumenbaum's question: "Did you prepare all the checks," rather than Ms. Kosaka's correct translation: ". . . you wrote out everything in other portions so that Reverend Moon can sign. . . ." See discussion infra at Section C.

Goettel stated that the official translation by the Court was more accurate because of the ability of the translator to study the transcript rather than rendering a "simultaneous" interpretation immediately before the jury. He further pointed out, however, that the interpretation prepared during the Grand Jury hearings was better than that of the court-appointed translator, because the interpreter could hear words that were not audible on the tape reviewed by the court-appointed translator. Judge Goettel thus concluded by stating:

> The court translation is available and should you want to see it, you may ask for it. I do not suggest to you that it necessarily has any importance in the case.

T. 6543. (Emphasis added.) The jury, as recommended by the Court, did not request a copy of Ms. Kosaka's translation.

3. The Government's Intentional Use of a Second Grand Jury to Hear A Significant Portion of Mr. Kamiyama's Testimony Precluded a Meaningful Decision by the Indicting Grand Jury Regarding Mr. Kamiyama's Credibility.

The difficulties posed by the misinterpretation of Mr. Kamiyama's Grand Jury testimony were compounded by Mr. Flumenbaum's simultaneous use of different Grand Juries. While an accurate word-for-word translation of a witness' testimony is critical in a perjury prosecution, the witness' appearance before the Grand Jury is also critical to the extent that it allows the Grand Jury to make a reasoned evaluation of the witness's credibility. Despite this fact, the testimony which was used to support several of the perjury counts against Mr. Kamiyama was presented to a different Grand Jury than that which actually returned the indictment.

The injustice of using different Grand Juries was raised by Mr. Kamiyama and objected to during pretrial proceedings before the Court. The Government responded that the decision to use a substitute Grand Jury was made by the foreperson of the indicting Grand Jury. According to the Government, following Mr. Kamiyama's testimony on July 9, 1981, the foreperson directed Mr. Kamiyama to appear again on July 16, 1981. Because the indicting Grand Jury had planned a vacation for the week of July 13, 1981, however, Mr. Kamiyama's appearance on July 16, 1981 was scheduled before a substitute Grand Jury.

Following Mr. Kamiyama's testimony on July 16, 1981, the Government claimed that the foreperson of the substituting Grand Jury directed Mr. Kamiyama to appear again on July 21, 1981. Mr. Kamiyama appeared on that date and again testified before the morning session of the substitute Grand Jury. When he was directed to return the following week, Mr. Kamiyama asked if he could complete his testimony that day. Because the substitute Grand Jury was not available in the afternoon session, the Government allowed Mr. Kamiyama to complete his testimony during the afternoon of July 21, 1981 before the original indicting Grand Jury. The Government explained that the indicting Grand Jury "had just returned from its vacation." See Affidavit of Jo Anne Harris, February 5, 1982 (A. 652).

Although Mr. Kamiyama raised the issue of the ability of the indicting Grand Jury to assess his credibility based solely on the prosecutor's reading of his testimony, the Government argued that the substitute Grand Jury had been fully apprised of the substance of the investigation. Thus, the Government argued that "throughout its short but intensive involvement in the investigation, the substituting Grand Jury actively participated with questions directed at the facts and the law." Id. (A. 653). [39]

It was only after the close of the Government's case that Mr. Kamiyama learned of the actual circumstances surrounding his testimony before the substitute Grand Jury.

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[39] As discussed infra at Section C, the issue of substituting Grand Juries arose again following the Court's deletion of several perjury specifications based on the court-appointed translator's conclusions. The Government simply placed the deleted specifications, as corrected, in a supplemental one count indictment which was presented to yet another Grand Jury on March 9, 1982. Although this Grand Jury had absolutely no previous experience with this complicated case, it agreed to return the indictment on the same day that it was presented. Mr. Kamiyama's efforts to obtain a copy of this Grand Jury transcript were opposed by the Government and subsequently refused by the Court. See, Endorsement, December 13, 1982.

At this time, Mr. Flumenbaum testified with respect to the scope of the Grand Jury investigation as it affected the issue of the materiality of the perjury counts. During the cross-examination of Mr. Flumenbaum by counsel for Mr. Kamiyama, the following exchange took place:

> MR. LAWLER: Now, Mr. Kamiyama was asked to testify on the 16th of July?
>
> MR. FLUMENBAUM: That's correct.
>
> MR. LAWLER: Even though the Grand Jury that was conducting the investigation was not going to be in session on that day?
>
> MR. FLUMENBAUM: The Grand Jury that was conducting the session, the foreperson directed Mr. Kamiyama to appear on the 16th, knowing that he would appear before another Grand Jury, and knowing that --
>
> * * *
>
> MR. LAWLER: Do you mean to tell us that the transcript reveals that the foreperson of the Grand Jury stated on the record that you are to return on the 16th before a different Grand Jury?
>
> MR. FLUMENBAUM: I am sure Mr. Kamiyama wasn't told that, but --
>
> * * *
>
> I am not saying one way or the other. I am just saying that he was directed to appear on July 16 by the foreperson of the Grand Jury, and my response to you is the foreperson of the Grand Jury at that time, and that Grand Jury knew that it would not be sitting and that Mr. Kamiyama's testimony would be taken be another Grand Jury on that date.

(Emphasis added.) Mr. Flumenbaum's original testimony suggested that the decision to ask Mr. Kamiyama to return on a day when a substitute Grand Jury would be scheduled to hear his testimony was made by the foreperson of the original Grand Jury. During the questioning which followed, however, Mr. Flumenbaum was forced to admit that he made the decision requiring Mr. Kamiyama to return on July 16 and that he asked the foreman to instruct Mr. Kamiyama to return on that day:

> MR. LAWLER: Did you in fact on that date instruct the witness -- did you in fact ask the foreman to instruct the witness --
>
> MR. FLUMENBAUM: That's an important distinction, Mr. Lawler.
>
> MR. LAWLER: Will you let me finish the question please, Mr. Flumenbaum? You are a witness now. Was it you who instructed the foreman to instruct the witness to be back here next Thursday, July 16?
>
> MR. FLUMENBAUM: I did tell the foreman to instruct the witness as such.
>
> MR. LAWLER: You were the one who initially stated July 16; is that correct?
>
> MR. FLUMENBAUM: I told the foreman to instruct him to be there July 16. It is my recollection that it had been discussed with the Grand Jury in Mr. Kamiyama's absence about his returning on July 16 and the fact that they were not going to be there.
>
> MR. LAWLER: And is that recorded somewhere?
>
> MR. FLUMENBAUM: As you know, the documents that you have only reflect Mr. Kamiyama's appearance before the -- testimony before the Grand Jury. . . .
>
> MR. LAWLER: Do you have a transcript which reflects that which you have just given us as your recollection?
>
> MS. HARRIS: Objection.

> THE COURT: Sustained. It has nothing to do with materiality.

(Emphasis added.)

Although Mr. Flumenbaum subsequently admitted that one of the issues that was important to the Grand Jury was Mr. Kamiyama's credibility, he also admitted that he had directed the foreman to request that Mr. Kamiyama appear on a day when he knew the indicting Grand Jury would not be in session. The Court, however, refused to allow Mr. Kamiyama's attorney to question Mr. Flumenbaum with reference to the transcripts which detailed Mr. Flumenbaum's discussion with the Grand Jury on that point. Without such examination, or a review of those transcripts, there is no apparent explanation for the necessity of Mr. Kamiyama's appearances before the substitute Grand Jury on July 16 and July 21, 1981, when the original indicting Grand Jury was available by at least July 21, 1981.

C. The Original Interpreter's Rendition of Mr. Kamiyama's Testimony Was Substantively Inaccurate and Inconsistent With Other Translations Prepared for the Government and the Court.

The foregoing discussion is best illuminated by several examples of the Grand Jury interpreter's incompetence and the prosecutor's manipulation of the misinterpreted testimony cited within the indictment. In several instances, the prosecutor selectively altered the terms of the indictment in order to support the Government's predetermined conclusion that Mr. Kamiyama had testified falsely before the Grand Jury. [40] The prosecutor, moreover, totally ignored the conceededly more accurate reports of Mr. Sasagawa and the Court-appointed translator, Ms. Kosaka, [41/] and misled the Grand Jury with respect to the nature of the changes to be adopted.

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[40] Mr. Sasagawa, in his August 25, 1984 statement, confirmed that the prosecutor was convinced of Mr. Kamiyama's guilt from the outset of the proceedings:

> A: When I went to the Prosecutor's office the first day, the Prosecutor said that the Interpreter was doing well, but there seems to be a problem in his translation, so please check this part.
>
> Q: What exactly does, 'there seems to be a problem' mean?
>
> A: Well, probably the translation, I took it that someone was saying it was not accurate, or deceptive, and I thought that he wanted me to check out whether this court interpreter was intentionally making errors in translation. Later, I found out that Mr. Flumenbaum had a certain amount of trust in the court interpreter. So, what Mr. Flumenbaum said in the beginning about the interpretation being a problem, I misheard, and *now I think that what he was saying was that from the beginning, this Defendant Kamiyama was guilty of perjury, and wanted to pursue that point thoroughly*.
>
> Q: Does that mean he wanted to pursue it as a charge of perjury all the way?
>
> A: *Yes, I think that's right*. . . .
>
> * * *
>
> A: . . . he seemed as though *he was confident that Mr. Kamiyama had committed perjury. When I was talking with other . . . what shall I say, colleagues of Mr. Flumenbaum, they were saying this, (that) he firmly believed that*.

See Exhibit L, *supra* at 9, 48. (Emphasis added.)

1. Oath

A valid oath is a prerequisite to a conviction for perjury. Indeed, the very essence of perjury consists in the witness' violation of his sworn committment to tell the truth. Grand Jury witnesses, accordingly, are routinely adminstered an interrogative type oath, designed to "awaken [their] conscience and impress [their] mind with [the] duty to [testify truthfully]." See, Rule 603, Federal Rules Evidence. The oath asks:

> Do you solemnly swear that the testimony you are about to give this Grand Jury in the matter now pending before it, shall be the truth, the whole truth, and nothing but the truth, so help you God?

A witness must knowingly and intelligently assent to this oath in order to be properly sworn.

[41/] The Court, as noted above, stated:

> . . . somebody sitting down and listening to and studying for a period of time the translation involved can come up with a much more complete and accurate translation than can somebody who is making a simultaneous translation immediately before the jury.

T. 6542.

The record of the proceedings in Mr. Kamiyama's case demonstrates that the Grand Jury interpreter consistently misinterpreted the standard oath, altering its interrogative form as well as its imperative to tell the truth. On the first day of Mr. Kamiyama's testimony, for example, the interpreter summarized the oath as follows:

> As for this case, uh, as for here, as for the truth, all, uh, we (I) think we (I) would like to have you kindly convey only the truth. [42]

Similarly, on the second day of testimony the interpreter characterized the oath in the following manner:

> At this time before the Grand Jury, OK? We'd like to have you give a statement as a reference and as for this, uh, everything we'd like to have you convey only the truth.

In both of these instances the oath was conveyed as a vague feeling or hope, rather than a concrete question requiring a distinct yes or no answer. The statement rendered by the interpreter, moreover, did not express the solemnity of the witness' undertaking and did not advert to the term "swear." Mr. Kamiyama, consequently, did not subscribe to an oath designed to awaken his conscience and alert him to the necessity of stating the truth. This fact was confirmed by Mr. Sasagawa during his August 25, 1984 interview, after reviewing the English oath and Mr. Mochizuki's interpretation:

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[42] These translations were developed by Professor John Hinds, a linguist on the faculty of the Department of Speech Communications at the Pennsylvania State University, based upon the audio tapes of Mr. Kamiyama's Grand Jury testimony. Professor Hinds' declaration and curriculum vitae are attached hereto as Supplemental Exhibit 1. The translations have been reviewed and confirmed by Mrs. Sato, see Exhibit M, attached hereto; and Mrs. Mitsuko Saito-Fukunaga, see Exhibit O, attached hereto. Mrs. Saito-Fukunaga's curriculum vitae is attached hereto as Exhibit P.

> . . . this is Mr. Mochizuki's way of talking, and in this particular case, he was probably not taking notes . . . in this case, it was too much rhetoric. . . .
>
> Q: At any rate, if the word, "will you swear" is not included . . .
>
> A: That's right, without it, it would be difficult as a translation I think. The Japanese do not understand the meaning of "oath" very well, but, of course its important in American courts.
>
> * * *
>
> Q: . . . it would not be an oath if one is told, "I would like you to kindly convey only the truth."
>
> A: Yes, that's right. [43/]

On the second day of his testimony, moreover, Mr. Kamiyama did not subscribe to an oath of any kind. The Grand Jury tapes show that Mr. Kamiyama made no response to the interpreter's summarization of the oath. Nevertheless, the interpreter indicated to the prosecutor and the Grand Jury that he responded "yes." In the absence of any response, Mr. Kamiyama could not be considered a sworn witness. More fundamentally though, this incident

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[43/] See, Exhibit L, supra at 19, 30.

demonstrates the Grand Jury interpreter's willingness to improvise or embellish responses to the detriment of Mr. Kamiyama.

Also significant in this regard is the fact that the audio tapes of Mr. Kamiyama's third day of testimony reveal no oath whatsoever. This is so despite the fact that the written transcript indicates that an oath was administered and that the recording machine was started prior to the alleged administration of the oath. Again, in the absence of a valid oath, Mr. Kamiyama could not properly have been subjected to prosecution for perjury.

2. Fifth Amendment Warnings.

The Grand Jury interpreter also mistranslated the prosecutor's explanation of Mr. Kamiyama's rights under the Fifth Amendment. Thus, on the first day of Mr. Kamiyama's testimony, the prosecutor stated:

> You are entitled to certain rights, and let me explain to you what those rights are. First, you may refuse to answer any question if a truthful answer to that question would tend to incriminate you, personally, in any way, shape or form. Do you understand that?

The interpreter, however, conveyed this to Mr. Kamiyama as:

> . . . there are several rights granted to you. I will have the pleasure of explaining these to you. First, you are able to refuse answers to questions which may cause you to fall into crime. Do we have your kind understanding?

For a person unfamiliar with American culture and legal procedures, such as Mr. Kamiyama, this interpretation does not adequately describe the protections afforded by the Fifth Amendment.

This same pattern of misinterpretation was followed during Mr. Kamiyama's subsequent Grand Jury appearances. On July 16, 1981, for example, the prosecutor stated:

> At any time, Mr. Kamiyama, that I ask you a question and you want to invoke your Fifth Amendment privileges, please feel free to do so.

The interpreter, however, stated:

> And, uh, whenever I ask you a question, well, according to the revised item of the Fifth Article, you are protected, so, as for using that that is your right.

(Emphasis added.) Similarly, on July 21, 1981, Mr. Flumenbaum noted:

> I am asking you questions, Mr. Kamiyama. If you want to refuse to answer the questions, but you have to answer whatever questions I ask you. If you want to refuse to answer them and exercise your Fifth Amendment rights, you can.

This statement was interpreted as follows:

> Now, I am directing my questions to you, but, if you will insist on refusing . . . according to . . . uh . . . the Fifth Article, you know, amended . . . well . . . something like an amended law, is it? . . . According to that, you have the right to refuse. However, uh, we think we'd like you to answer the questions we have asked you as much as possible.

(Emphasis added.) It is highly doubtful that this type of interpretation could have alerted Mr. Kamiyama, a Japanese citizen, to his Fifth Amendment rights. More fundamentally, though, it emphasizes the Grand Jury interpreter's complete lack of familiarity with basic legal expressions and principles. On this ground alone, the interpreter was unqualified to participate in formal Grand Jury proceedings. [44]

3. Perjury Warnings.

The Grand Jury interpreter's inexcusable lack of familiarity with elementary legal terms was again demonstrated during the prosecutor's futile effort to warn Mr. Kamiyama of the consequences of perjurious testimony. Such warnings are not constitutionally compelled, but are standard practice in the United States District Court for the Southern District of New York and various other courts as a matter of essential fairness. Thus, on July 9, 1981, the first day of Mr. Kamiyama's testimony, the following exchange occurred:

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[44] In a related matter, Mrs. Sato's review of the Grand Jury tapes revealed yet another prejudicial interpretation error. During his July 16, 1981 Grand Jury appearance, Mr. Kamiyama read the following prepared statement in Japanese:

> I have done . . . preparations in order to answer the questions concerning the content of the affidavit submitted to the Justice Department the other day. However, as I am the person who is the object of the investigation this time, I would like to maintain my rights guaranteed by the Constitution.

Mr. Mochizuki, however, interpreted this language as follows:

> I am prepared to answer questions dealing with information contained in the affidavit which I submitted to the Department of Justice. However, since I am a target of this investigation, I wish to reserve the rights to claim my constitutional privileges with respect to other questions.

(Emphasis added.) The interpretation obviously distorts Mr. Kamiyama's principal intention. Rather than emphasizing his desire to retain his Fifth Amendment privilege with respect to questions dealing with the affidavit, the interpretation implies that Mr. Kamiyama wishes to waive his Fifth Amendment rights as they pertain to the affidavit. See Exhibit M, supra.

> Q: [MR. FLUMENBAUM]: Finally, Mr. Kamiyama, if you should give a false answer or fail to testify completely and truthfully in response to a question that I ask you, you could be charged with a separate criminal, uh, violation for perjury or for obstruction of justice. Do you understand that?
>
> [MR. MOCHIZUKI]: And and, uh, with today's questions and answers, uh, if there are any false answers or to neglect to testify, separately, eee there is a possibility that you will be criticized according to criminal law.
>
> A: [MR. KAMIYAMA]: That means not the tax law, but . . . .
>
> [MR. MOCHIZUKI]: Does that mean that on top of or apart from the tax laws?
>
> Q: [MR. FLUMENBAUM]: That's correct, if you should testify falsely.
>
> [MR. MOCHIZUKI]: Uh . . . testimony . . . testimony . . . ee . . . if you twist it or things like that.
>
> A: [MR. KAMIYAMA]: That means (that I shall be) charged with criminal perjury?
>
> [MR. MOCHIZUKI]: Does that mean, once again, that I shall be charged for . . . I am trying to find the word. [Mr. Flumenbaum whispers: "perjury"] fraudulent answers or fraudulent, well, negligence of testimony or. . . .

> A: [MR. FLUMENBAUM]: If you should knowingly and willfully give false answers to this Grand Jury that is a separate crime. Do you understand that?
>
> [MR. MOCHIZUKI]: Uh, . . . knowingly, you know . . . ee . . . the meaning is that the act of making false statements, or . . . aaa . . . twisting your testimony can become comparable to committing a crime.

(Emphasis added.) This dialogue clearly illustrates the interpreter's incompetence.

Most obviously, the Grand Jury interpreter could not think of the word "perjury." Even when Mr. Kamiyama used the Japanese word for perjury (gishozai) and the prosecutor attempted to correct his English interpretation, the interpreter continued to use ambiguous and confusing expressions, such as "fraudulent answers," "twisted testimony" and "negligence of testimony" in both Japanese and English. Mr. Sasagawa noted this error in his report, and brought it directly to the attention of the prosecutor. During his August 25 interview Mr. Sasagawa explained:

> A: The subject of perjury came up . . . where the prosecutor gives a warning toward Mr. Kamiyama . . . for instance, about calling that perjury, well, uhh, the interpreter forgot the word, and said things like false words and what not . . . the interpreter got stuck, forgetting the word, "perjury."
>
> Q: Did you tell this to Mr. Flumenbaum.
>
> A: . . . I wrote it in my report. [45]

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[45] *See*, Exhibit L, *supra* at 36.

The prosecution, accordingly, was not unaware of the Grand Jury interpreter's lack of facility with legal terms and concepts. Throughout the course of the proceedings, however, Mr. Flumenbaum maintained that the interpreter was qualified to translate before the Grand Jury.

Somewhat less obvious than the interpreter's inability to think of the word "perjury," but equally prejudicial, was the interpreter's failure to convey the full import of false testimony. While the prosecutor stated that Mr. Kamiyama "could be charged with a separate criminal . . . violation" for perjured testimony, the interpreter told Mr. Kamiyama that there was "a possibility" he would be "criticized" for testifying falsely. Clearly, the two expressions are not interchangeable. The confusion inevitably caused by Mr. Mochizuki's circular interpretation was reflected in Mr. Kamiyama's questions, which attempted to clarify the interpreter's vague expressions. [46] At no point, however, was the concept of a separate perjury prosecution explained to Mr. Kamiyama in an accurate and concise manner.

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[46] This same type of circumlocution and confusion was noted by Mr. Sasagawa:

> [Mr. Sasagawa]: This interpreter [Mr. Mochizuki] translates with roundabout expressions adding on his own unnecessary interpretations, making errors in translation, and because of this, Mr. Flumenbaum's questions go around in circles many times. Listening to the tapes I felt frustrated several times. I did tell Flumenbaum about this. . . . .

See, Exhibit L, supra at 52.

4. Indictment Specifications

In addition to the Grand Jury oath and the various warnings which should have been provided to Mr. Kamiyama, the Grand Jury interpreter altered major portions of the dialogue between the prosecutor and Mr. Kamiyama. Many of these misinterpreted exchanges were incorporated within the indictment against Mr. Kamiyama as specifications of perjury.

(a) Count Ten

Count Ten of the superseding indictment, for example, includes the following specification, which is underlined as perjurious:

> Q: [MR. FLUMENBAUM]: You prepared all the checks for him [i.e., Reverend Moon]?
>
> A: [MR. KAMIYAMA]: That's correct.

In its Bill of Particulars, the Government stated that Mr. Kamiyama's answer was false because "Kamiyama did not prepare all the checks for Reverend Moon." (Emphasis added.) This assertion, however, is intentionally misleading when viewed in the context of the prosecutor's statements to the Grand Jury on December 15, 1981, the date that the superseding indictment was returned.

At that time, Mr. Flumenbaum made the following comments to the Grand Jury in order to explain the difference between the interpretation of the specification set forth in the original indictment and the specification as subsequently retranslated by Mr. Sasagawa:

> [MR. FLUMENBAUM]: Second in that count, just before the asterisks, Mr. Kamiyama testified "that's correct." The question was "You prepared all the checks for him."
>
> You will remember that Mr. Sasagawa testified that the question was interpreted slightly more broadly than that and the question was "You mean that all the rest of the checks were previously written up, so he could sign when you asked him to sign?"

(Emphasis added.) Mr. Sasagawa's translation is consistent with that of Ms. Kosaka, the Court-appointed translator:

> In other words, you wrote out everything in other portions so that Reverend can sign and you asked for his signature.

Thus, the question which Mr. Kamiyama actually heard and responded to, was not whether he prepared all of the checks (the question asked in English by Mr. Flumenbaum). The question which Mr. Kamiyama heard (as asked by the interpreter) was whether, with respect to each check, he had filled out all portions of the check other than the signature.

Both Mr. Sasagawa's and Ms. Kosaka's translation of the manner in which the question, "You prepared all of the checks for him?" was interpreted to Mr. Kamiyama, are consistent with Mr. Kamiyama's answer to the question which immediately followed:

> Q: [MR. FLUMENBAUM]: Did you personally write the checks?
>
> A: [MR. KAMIYAMA]: *Right after my arrival. I wasn't familiar with English and I had a few other people surrounding me, and these are the people who did the job*.

(Emphasis added.) Mr. Kamiyama's answer to this question directly contradicts the Government-appointed interpreter's earlier statement that Mr. Kamiyama had prepared *all* of the checks. The prosecutor subsequently explained to the Grand Jury that he would remove the "underlining" in this specification, thereby indicating that Mr. Kamiyama's answer was not false:

> The job that they were talking about was the writing of the checks for Reverend Moon. Based on the review of the tapes, it seems that Mr. Kamiyama actually didn't say that whole thing about the actual people doing the job, making his answer a little more, a little bit vague and as a matter of law, if an answer is literally true but unresponsive, that is not a perjurious answer. If it is literally true and non-responsive, even if it is possibly misleading, that still is not a perjurious response. *It was my opinion that we should remove the underlining because the translation was slightly off enough, to, you know, that the substance could be altered*. . . .

(Emphasis added.)

Although substantively, the original interpretation of Mr. Kamiyama's answer to the question "Did you personally write the checks?" was literally the same as those translations subsequently prepared for Mr. Kamiyama and for the Court, [47] the prosecutor did not remove the underlining as he said he would. Instead, Mr. Flumenbaum deleted this question and answer, in its entirety, from the superseding indictment. The result of this deletion is that Mr. Kamiyama's answer to the previous question -- that he prepared all of the checks for Reverend Moon -- was taken completely out of context. Read literally in the context of the indictment, Mr. Kamiyama's response to this question clearly states that Mr. Kamiyama personally prepared all of the checks. Without the further qualification provided in the deleted specification, this response confirms the erroneous impression that others around Mr. Kamiyama had not prepared the checks.

Mr. Flumenbaum apparently knew that by deleting a specification which was substantially correct, the specification which remained in the indictment would assume a completely different meaning. Moreover, as noted earlier, Mr. Flumenbaum knew that the remaining specification was incorrectly translated. The translation of the question which remained in the indictment, was whether Mr. Kamiyama had prepared all of the checks; the actual question which Mr. Kamiyama heard was whether he filled out all portions of the checks other than the signature. Mr. Flumenbaum, however, in the Government's Bill of Particulars, drafted almost two months later, stated unequivocally that Mr. Kamiyama's affirmative response to the question "You prepared all of the checks?" was false because "Kamiyama did not prepare all the checks for Reverend Moon." A. 678. (Emphasis added.) This question and answer, incorrectly translated, and taken out of context by Mr. Flumenbaum's deletion of the question and answer which followed, was included as one of the perjury specifications which went to the jury as part of Count Ten. Mr. Kamiyama was subsequently found guilty of perjury under Count Ten, as alleged.

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[47] Ms. Kosaka translated this answer as "upon my arrival at that time, my hearing comprehension and my writing ability in English was nil. I (did it) by asking such people around me." The translation prepared by the translator retained by Mr. Kamiyama which was cited in his Motion to Dismiss, was "When I first came, I could not understand English or speak English, so I was helped by those around me who could." There is no indication that Mr. Sasagawa's translation differed substantially.

The omission of Mr. Kamiyama's response, that he did not prepare all of Reverend Moon's checks personally, but that he had other people do it -- and the interpreter's incorrect translation of the prosecutor's question, "You prepared all of the checks?" also changed the meaning of the following two answers, which the Government claimed were perjurious:

> Q: [MR. FLUMENBAUM]: Did Reverend Moon ever write any portion of the checks on the Chase Manhattan account other than his signature?
>
> A: [MR. KAMIYAMA]: He never wrote anything other than his own signature as far as I remember.

> Q: [MR. FLUMENBAUM]: So to your knowledge, he never wrote anything but the signature; is that correct?
>
> A: [MR. KAMIYAMA]: To the best of my knowledge, Reverend Moon never affixed anything other than the signature in the book, in the check.

In its Bill of Particulars, the Government stated that these responses were false because "Reverend Moon wrote portions of certain checks on the Chase Manhattan account other than his own signature." A. 678.

During the trial, the Government presented several checks, out of several hundred which were written, claiming that Reverend Moon's handwriting could be found on portions of those checks other than the signature line. Relying on the argument that Mr. Kamiyama had testified that he had prepared all of the checks personally for Reverend Moon, the Government cited these checks as disproving Mr. Kamiyama's Grand Jury testimony that "as far as [he] could remember" Reverend Moon "never wrote anything other than his own signature." Mr. Kamiyama, however, as noted above, did not testify that he had personally prepared all of the checks for Reverend Moon. If the prosecutor's question to Mr. Kamiyama had been correctly interpreted and if Mr. Flumenbaum had not deleted Mr. Kamiyama's testimony to the effect that he had others prepare the checks, Mr. Kamiyama's statement "that as far as he could remember" or "to the best of his knowledge," Reverend Moon "never wrote anything other than his signature" could not have been perjurious. This result follows irrespective of whether

Mr. Kamiyama's responses are considered in the context of the indictment as written, or in the context of the evidence presented by the Government at trial.

The prosecutor's intentional deletion of Mr. Kamiyama's statement that "he did not prepare all the checks personally" also changed the meaning of the preceding question and answer in Count Ten:

> Q: [MR. FLUMENBAUM]: And did Reverend Moon write out the other portions of the check other than his signature?
>
> A: [MR. KAMIYAMA]: No, no, he didn't do it.

Ms. Kosaka translated the same question and answer as:

> Q: [MR. FLUMENBAUM]: And as for Reverend Moon does he personally write out other portions of the check, for example, the amount other than the signature?
>
> A: [MR. KAMIYAMA]: I don't think so. No, he doesn't.

(Emphasis added.) The phrase "I don't think so," set forth in the Kosaka translation, is consistent with Mr. Kamiyama's testimony that he did not prepare all of the checks personally, and that therefore, he could not be absolutely sure that Reverend Moon did not write out portions of certain checks in addition to his signature. In contrast, the interpreter's statement "No, no he didn't do it," suggests that Mr. Kamiyama was emphatic in his response, an interpretation which is logically consistent with the misinterpreted statement that Mr. Kamiyama prepared all of the checks. [48] Thus, in the context of a correct translation of the earlier dialogue, Mr. Kamiyama's answer to this question, as correctly translated, was not perjurious, in that there was no evidence that Mr. Kamiyama was present when Reverend Moon filled out other portions of certain checks.

The substance of the two remaining specifications in Count Ten which were underscored in the superseding indictment as being perjurious, was also altered as a result of Mr. Flumenbaum's decision to delete correctly interpreted specifications and as a result of his misleading comments to the Grand Jury. These two specifications were included in the original indictment together with a third specification, set forth below:

> Q: [MR. FLUMENBAUM]: Did Reverend Moon carry the checkbook with him?
>
> A: [MR. KAMIYAMA]: He doesn't, because I managed it.
>
> Q: [MR. FLUMENBAUM]: You carried the checkbook with you from the very beginning of the account?
>
> A: [MR. KAMIYAMA]: Yes, I kept it myself from the beginning.
>
> * * *
>
> Q: [MR. FLUMENBAUM]: Well, did you carry the checkbook, or did he carry the checkbook?

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[48] *I.e.*, if in fact Mr. Kamiyama had prepared all of the checks, he could be certain that Reverend Moon did not fill out portions other than the signature.

> A: [MR. KAMIYAMA]: As I said to you earlier, I carried it. I kept it myself.

Mr. Kamiyama's answer to the third question, incorporating the word "carried," suggests that Mr. Kamiyama's use of the terms "managed" or "kept" in his first two responses was also intended to convey the meaning that he physically "carried" or physically "possessed" the checkbook. However, in the translations which were subsequently prepared, both Mr. Sasagawa, and the Court-appointed translator, Ms. Kosaka, translated Mr. Kamiyama's response to the third question as follows: "As I told you earlier, I was in charge of it." This translation eliminated any reference to the phrase "I carried it," which had been incorrectly included in the original interpretation of Mr. Kamiyama's testimony. Thus, as correctly translated, Mr. Kamiyama's answer to the third question explained that his answers to the first two questions i.e. that "he managed the account" and that "he kept it," were not intended to mean physical possession of the checkbook, as suggested by the interpretation used in the indictment.

Although a correct translation of the response question places the first two answers in a completely different context, the prosecutor, rather than correcting the translation of the third answer and leaving it in the indictment to accurately explain the meaning of Mr. Kamiyama's initial responses, deleted this question and answer from the superseding indictment. He explained this alteration to the Grand Jury in the following manner:

> It was my opinion that we should remove the underlining because the translation was slightly off enough to, you know, that the substance could be altered and also the section of that Count where Mr. Kamiyama was translated as saying in response to the question "Did you carry the checkbook or did Reverend Moon carry the checkbook?" The response, "I carried it, I kept it myself."
>
> According to the tape and Mr. Sasagawa's testimony, what Mr. Kamiyama has said was not something so precise: Carried it or kept it, but I believe what he said was, "[A]s I told you earlier, I was in charge of it." That again may not have been -- the words are somewhat different than the words here and I would recommend even though I agree with you that the substance is really -- is really not different, I would -- I have in the superseding indictment removed that as a specification of falsity simply because one of the reasons being not to create any issues if we don't need it.

(Emphasis added.) This statement was misleading in several respects. First, although the prosecutor stated that the underlining should be removed, he did not correct the translation, nor did he remove the underlining. Instead, he deleted the entire specification. Mr. Flumenbaum further misled the Grand Jury when he stated that the "substance" of the words "carry" and "in charge of" was "really not different." This statement was not only misleading but clearly incorrect in the context of Mr. Kamiyama's testimony. Finally, to the extent that a correct translation of the third response would have placed the earlier answers in a completely different context, the deletion of that specification further misled the Grand Jury.

The distinction between the Government-appointed interpreter's statement that Mr. Kamiyama "carried" or "kept" the checkbook and the conclusion of both Mr. Sasagawa and Ms. Kosaka that Mr. Kamiyama stated he was "in charge" of the checkbook, is critically relevant in the context of the Government's charges against Mr. Kamiyama. According to the Government's Bill of Particulars, Mr. Kamiyama's answers to the questions set forth above were false because "the Government contends that Reverend Moon carried his checkbook with him." The fact that Mr. Kamiyama was in charge of a checkbook, would not necessarily eliminate the possibility that Reverend Moon or others may have carried the checkbook on occasion and that Mr. Kamiyama may not have been aware of that fact. As Mr. Kamiyama testified earlier, he had others prepare the checks because he was unable to communicate in English. If this specification had not been deleted, Mr. Kamiyama's testimony that he "kept" or even "carried" the checkbook would not have supported a finding that his testimony was false simply because Reverend Moon had been seen carrying a checkbook. Moreover, even if Mr. Kamiyama's use of the word "kept" or "in charge of" was intended to convey the meaning that he "carried the checkbook," the evidence produced by the Government to the effect that there were two pocket checkbooks for the Chase Manhattan Bank accounts should have precluded a finding that Mr. Kamiyama's response was intentionally false under either translation.

Finally, Mr. Sasagawa noted in his report that Mr. Kamiyama's actual answer to the second question (i.e., "Yes, I kept it myself from the beginning") did not contain the phrase "from the beginning" as reported by the interpreter. During his August 25, 1984 interview Mr. Sasagawa observed:

> . . . Mr. Kamiyama says he was "keeping" [a checkbook].
>
> Q: Ah, "keeping" it.
>
> A: And here the interpreter adds something unnecessary, "from the beginning." These are the points that can be called Mr. Mochizuki's shortcomings. Because all he said was "I was keeping it," and does not say "from the beginning" . . . then the interpreter shouldn't say anything beyond that. [49]

Significantly, without the explanatory statement "from the beginning" Mr. Kamiyama's answer is not directly responsive to the prosecutor's question (i.e., "you carried the checkbook with you from the very beginning of the account?"). The Supreme Court has consistently reiterated that perjury convictions may not be premised upon such non-responsive answers. See e.g., Bronston v. United States, 409 U.S. 352 (1973). Mr. Kamiyama's conviction, accordingly, rests at least in part upon words which he did not speak. This in itself is a manifest injustice.

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[49] See, Exhibit L, supra at 43.

(b) Count Eleven

In Count Eleven, three specifications included answers which were originally underscored by the Government as perjurious. Each such answer was given in response to a question having to do with monies in the so-called "Japanese Family Fund":

> Q: And where did you get the money, the $400,000 to deposit in Reverend Moon's account?
>
> A: From Family Fund.

* * *

> Q: Well, where did the $400,000 -- how did you get the $400,000 that you deposited into Reverend Moon's account?
>
> A: Over the years, our brethren from Japan who came to USA, they contribute and it was accumulated. I remember there are at least 700 brethren coming to the USA.

* * *

> Q: Why did you use Reverend Moon's name for the Family Fund?
>
> A: As the money came from overseas, and part of the money may become necessary as expenses to take care of the brethren, we put it in Reverend Moon's name, who generally represents the International Unification Church.

In the Government's Bill of Particulars, the prosecutor described these statements as being false because "the $400,000 deposit into Reverend Moon's Chase Manhattan Bank account did not come entirely from the so-called 'Family Fund' and because some of the various monies attributed to the 'Family Fund' originated from sources in the United

States, i.e., not all of the money in the Family Fund came from overseas sources." A. 678. Essentially each of these specifications focused upon the issue of whether all of the money in the "Family Fund" came from overseas, or whether part of the money came from sources in the United States.

In his comments to the December 15, 1981 session of the Grand Jury, Mr. Flumenbaum addressed Count Eleven as follows:

> With respect to Count 11 originally, the original indictment underlined the entire portion of the transcript as follows: "The entire portion of that last answer, that sort of rambling answer that Mr. Kamiyama gave, in the superseding indictment, the only portion that is underlined is the part that talks about the money coming from overseas. It is clear that Mr. Kamiyama did say that. I have taken that out as a part of falsity, that part. [sic]

Although Mr. Flumenbaum did not recite Mr. Sasagawa's translation of this answer, he admitted that the original translation was rambling and essentially incoherent. This is consistent with the Court-appointed translator's version of the last two specifications, which were rendered as follows:

> Q: And this $400,000, where did it come from ultimately?
>
> A: Many Japanese brethren, the Japanese members come to America. The money that these people came (note: the relationship between the money and the people coming is not clear) was collected for some time and that went into the account.
>
> Q: Well, then, why did you borrow Reverend Moon's name for the Family Fund?

> A: Well, that, the reason why (I, we) put the money from overseas into the account in the name of Reverend Moon who represents the International Unification Church, is because when our foreign brethren came from overseas (I, we), deposited a portion of the money into it. I had them keep a portion as contributions from which it was paid as expenses in case an emergency occurred.

Ms. Kosaka's translation is significantly different from the interpretation contained in the indictment. According to Ms. Kosaka's translation, Mr. Kamiyama did not in fact say that all of the money in the Family Fund "came from overseas." What Mr. Kamiyama actually said, according to Ms. Kosaka, was that some of the money that came from overseas was put into the Family Fund, some of it was kept by those who brought the money from overseas, and some of the money in the Family Fund was deposited into the Chase accounts. This translation is critically different from the original interpreter's version, which states unequivocally that "the money came from overseas." Ms. Kosaka's translation is also inconsistent with the Government's charge of falsity as set forth in the Bill of Particulars.

Although Mr. Sasagawa apparently had the same problem with the Government-appointed interpreter's translation, the prosecutor did not change the language in the major portion of the last answer, but rather eliminated all of the underscoring with the exception of the phrase "as the money came from overseas." In doing so, Mr. Flumenbaum intentionally left the entire substance of the answer intact. According to his instructions to the Grand Jury on December 15, 1981, the elimination of the underscored portion of the answer was sufficient to address any remaining problems in the interpretation. This instruction was misleading and incorrect, particularly when viewed in the context of Ms. Kosaka's subsequent translation, or Mr. Kamiyama's translation, as set forth in his Motion to Dismiss the Indictment.

The Government subsequently admitted to the Court, moreover, that its theory of prosecution was not that some of the assets attributed to the Family Fund originated in the United States. P. 251. Instead, the prosecution argued and presented evidence to the effect that not all of the monies deposited in the disputed Chase Manhattan Bank accounts were derived from the Family Fund. Under this formulation, Mr. Kamiyama's alleged statement that the assets contained within the Family Fund came to the United States from overseas would at worst have been immaterial to the Grand Jury's investigation. Further, a correct interpretation of Mr. Kamiyama's testimony would not have been inconsistent with this scenario. Regardless of the construction which is accorded to Mr. Kamiyama's testimony, however, it is evident that he was tried and convicted at least in part on the basis of facts and theories which were never presented to the Grand Jury. Such a practice is at odds with both the Fifth and Sixth Amendments to the Federal Constitution.

Other material interpretation errors appear within Count Eleven. One such error was described by Mr. Sasagawa during his interview:

> A: [The Prosecutor asked]: "Was any of the money in the Family Fund ever used to pay expenses for the Japanese [Church] members who had come to America?"
>
> Q: And the interpreter translated this as "have you ever used the money in the Family Fund as expenses for the Japanese members to come to America . . . for airplanes and expenses to stay here?"
>
> A: Well the prosecutor just said expenses, so it doesn't mean transportation costs.
>
> Q: Besides, the prosecutor clearly said, "members who had come to America."
>
> A: The interpreter says something unnecessary; he says, "for airplane," which has nothing to do with the question here. This is an obvious mistranslation of the interpreter.
>
> Q: He added details himself.
>
> A: He added his own interpretation, I wrote these things out and turned it in to Mr. Flumenbaum. I also remember explaining it to him orally. It told him clearly that the interpreter added unnecessary things here.
>
> Q: So, the "Japanese members who had come to America" indicates that the money does not refer to expenses to come to America.
>
> A: It means expenses needed while they are in America.
>
> * * *
>
> Q: In addition, Mr. Kamiyama didn't understand this, so he asked again "for them to come to America?"

> A: Yes. And here again, the interpreter confirms "yes," which is unnecessary. [50]

(Emphasis added.) This error amply demonstrates the confusion caused by the Grand Jury interpreter's incompetence.

(c) Count Twelve

Mr. Flumenbaum's omission of several specifications pertaining to Count Twelve further supports the conclusion that the prosecutor intentionally deleted questions and answers which would have explained other specifications alleged to have been false. For example, under Count Twelve, the following dialogue was included as a specification:

> Q: Did you have any conversations with anyone as to whether or not it was proper for you to own more shares of stock in Tong Il than Reverend Moon?
>
> A: I didn't even think about it a bit.

The literal meaning of this answer was subsequently changed by Mr. Kamiyama's responses to the several questions which followed. These questions and answers, however, were omitted from the original indictment.

The relevant exchange, as translated by Ms. Kosaka, proceeded:

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[50] See, Exhibit L, supra at 44.

Q: Well, did you ever have such a conversation with Joe Tully?

A: I never spoke to Joe Tully about such matters.

Q: *Is there any such conversation with Lewis Burgess*?

A: *Possible*, but I don't recall.

Q: Then wouldn't it be that you did think a little about your owning more stock than Reverend?

A: (Not clear.)

Q: Didn't you ever talk to the Reverend about the percentage of stock, that you would have owned more?

A: I didn't talk about it.

Q: *Have you ever talked to Mike Warder who was the president then, about the same thing*?

A: *Possibly, but I don't remember*.

(Emphasis added.) Mr. Kamiyama's answers clearly indicate that he believed that he *may* have had conversations addressing the question of whether it was proper for him to own more shares of Tong Il Enterprises, Inc. than did Reverend Moon. Although he could not remember whether or not such conversations had occurred, his testimony, which Mr. Flumenbaum omitted, clearly contradicted his earlier statement that he "didn't even think about it a bit." Mr. Flumenbaum's omission of these statements from the original indictment thus placed Mr. Kamiyama's allegedly perjurious response in a very misleading context.

(d) *Summary*.

In summary then, the interpretation of Mr. Kamiyama's Grand Jury testimony contained within the final indictment was riddled with material errors which substantially altered the content of the intended dialogue. Ample evidence of these egregious errors was brought to the attention of the prosecution. The Government, however, refused to acknowledge the incompetence of its original interpreter, and pressed forward with its prosecution of Mr. Kamiyama. In order to expedite that prosecution, the Government resorted to highly improper methods of deception, inducing the Grand Jury to return an indictment on the basis of fundamentally incorrect evidence. Essentially then, Mr. Kamiyama was tried and convicted of perjury not on the basis of his own words but on the basis of his testimony as characterized and perverted by the Grand Jury interpreter, an event without precedent in American criminal law.

D. The Additional Charges Resulting from the False Swearing Counts Permitted the Government to Expand the Scope of its Proof at Trial to Include Highly Inflammatory Material Concerning the Religious Practices of the Unification Church.

It cannot be disputed that the false swearing charges against Mr. Kamiyama and the conspiracy count against both Reverend Moon and Mr. Kamiyama (i.e., Count One) gave the Government a basis for presenting a wide range of offensive and prejudicial material to the jury, evidence focusing not on the factually narrow income tax charges against Reverend Moon, but rather on the nature and practices of the Unification Church itself. The jury was thus invited to combine the evidence provided at trial with its own prejudices regarding the Church and Reverend Moon, [51] vastly simplifying the Government's task of proving that wrongdoing had occurred. Indeed, these actions, in conjunction with the Government's insistence upon a jury trial, support the conclusion that the prosecution intended from the outset to take advantage of widespread religious prejudice against the Church.

First, the perjury and conspiracy counts permitted the Government to enlarge the issues at trial, virtually without limit. For example, to show that Mr. Kamiyama's testimony before the Grand Jury regarding the source of monies in the Japanese Family Fund was false, the Government attempted to prove that the funds in the Church's Chase Manhattan Bank account were derived from street fundraising, thereby appealing to the expressed biases of the jurors against such practices. T. 2774; see Brief of the United States in United States v. Moon, 82-1275 (2nd Cir. Feb. 1983) at 19.

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[51] See, Supplemental Comments on behalf of the Unification Church of America (August 15, 1984).

This tactic was illustrated during the direct examination of Michael Warder, a former Church member, when the prosecutor asked:

> Q: Was there any practice that was followed by American church leaders with respect to personal funds?

T. 5139. Counsel for Reverend Moon and Mr. Kamiyama immediately objected, asserting that the inquiry intruded upon religious tenets of the Unification Church subject to the protection of the First Amendment. The Court subsequently responded that the question pertained to the origin of certain assets contained within the Japanese Family Fund:

> [THE COURT]: . . . I think it [is relevant] in that the Government's implicit position albeit not very well enunciated, is that the Family Fund moneys were in fact collections raised domestically by Japanese and other workers.

T. 5141. This issue would have been irrelevant had it not been for the false swearing counts against Mr. Kamiyama. The basis for the introduction of this highly prejudicial evidence was thus confirmed by the prosecutor:

> [MR. FLUMENBAUM]: The Government's position is that a portion that we have proved, a portion of the funds that were deposited in Moon's account was derived from fund raising in the United States. . . . [This] is inconsistent with what Mr. Kamiyama said in the grand jury. He said the money came from overseas. As to the fund raising it is our position that we have proved that substantial amounts of the fund came from fund raising in the United States. We will not be able to prove that every penny that is deposited came from fund raising.

T. 5141-42. (Emphasis added.)

Mr. Kamiyama, moreover, was presented to the jury as a loyal and longstanding follower and aide to Reverend Moon. His presence as a co-defendant and the implicit allegation that, in allegedly testifying falsely to the Grand Jury, Mr. Kamiyama was following Reverend Moon's orders, fit perfectly into the Government's underlying agenda -- that the Unification Church was a sham, and that, rather than being a religion, it was a means of the personal enrichment of Reverend Moon at the expense of "brainwashed" Church members. In support of its theory, the Government attempted to prove that Reverend Moon demanded complete obedience from Church members (T. 4008, members must "keep quiet, keep silent and just obey him"), T. 5724, even to the point that Reverend Moon made binding choices of marriage for members. T. 5718-5720. The Government also attempted repeatedly to introduce evidence that Reverend Moon lived lavishly, T. 2578-2585; 2726; T. 5920-5921 (evidence of value and upkeep expenses of Reverend Moon's residence), even though such information had no conceivable relevance to the case.

Thus, the Government "proved" its conspiracy case against Mr. Kamiyama by purportedly demonstrating that Mr. Kamiyama had made false declarations to the Grand Jury, implicitly inviting the jury to assume that he did so out of loyalty to Reverend Moon, and "proved" its case against Reverend Moon by arguing that followers of Reverend Moon invariably do that, and only that, which Reverend Moon tells them to do. The Government's proof therefore, conformed perfectly to the prejudices of the jury which were revealed during voir dire, and invited the jury to convict on the basis of unproven, unprovable and outrageous claims that Reverend Moon had unlimited power over his followers, including the power to compel them to testify falsely. [52]

Finally, the presence of Mr. Kamiyama and the corresponding expansion of the issues in the case was used by the Government to transform a highly technical tax dispute over beneficial ownership and trust principles into what the Government portrayed as a sinister criminal conspiracy, which led directly to the incarceration of both defendants. At sentencing, the trial court specifically relied on the additional charges in imposing prison sentences:

> [THE COURT]: I think that if this case were concerned solely with the tax offenses, taking into account the fact that defendant was newly in this country at the time of the offense, and that his facility with English is limited, and taking into account certain other, unique factors concerning his relationship to the Church and its business entities, that a suspended sentence would be appropriate for the tax offenses, if that were all we were confronted with.
>
> However, there is a conspiracy charge here and a conspiracy charge is an attempt to obstruct justice, to cause other persons to commit perjury,

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[52] See, Supplemental Comments on behalf of the Unification Church of America (August 15, 1984).

> make false statements, to submit falsified documents. S. 136.

Mr. Kamiyama's prosecution, accordingly, had a significant and pronounced impact upon the overall tenor of the trial. [53]

E. The Government's Improper False Swearing Charges Against Mr. Kamiyama Were Supported With Equally Contrived Allegations Pertaining to Certain Church Financial Documents.

In conjunction with the Government's charge that Mr. Kamiyama committed perjury, the indictment also alleged that Mr. Kamiyama attempted to obstruct the Government's investigation by submitting various documents which were false and which were intended to mislead the Justice Department and the Grand Jury. These documents included: (1) various loan agreements reflecting the transfer of funds from foreign Church members to Mr. Kamiyama; (2) a "Japanese Family Fund Ledger" ("Ledger"), which listed the dates and the amounts of contributions from Japanese Church members;

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[53] See also, T. 5533:

> THE COURT: I can tell you you [i.e., the Government] would have very little evidence of willful fraud. It is the attempt to cover up and all of the shifting around that makes this into a criminal tax case. It is the subsequent obstruction, if proved, that makes a willful tax fraud out of an initial failure to declare the time deposits.

and (3) the amended minutes of the first meeting of the Board of Directors of Tong Il Enterprises, Inc. ("Tong Il"), which addressed the transfer of certain inventory from the Church to Tong Il in exchange for stock which had been issued to Reverend Moon. The Government argued that this stock constituted unreported income to Reverend Moon.

As discussed below, there is no evidence whatsoever in the record that either the loan agreements -- which were admittedly backdated -- or the Tong Il minutes which were admittedly amended -- were substantively false, i.e., that the loan agreements did not reflect actual loan transactions or that the minutes did not reflect events which had actually occurred. With respect to the Family Fund Ledger, for example, the Government did prove that several of the many hundreds of entries were incorrect. At the time the Ledger was submitted, however, the Government was specifically advised that it represented an attempt to reconstruct a complicated series of transactions from contemporaneous memoranda which summarized the original transactions. There was no evidence that the errors which occurred, some of which were corrected by the Church prior to submission, were made intentionally by the individual who prepared the Ledger, or that they were made at the direction of Reverend Moon or Mr. Kamiyama in order to obstruct the Government's investigation. Nevertheless, the prosecution's contention that these documents were intentionally falsified was given undue credence by the mistranslated testimony supporting the Government's perjury charges.

1. The Tong Il Minutes Were Not Falsified.

The Government stated that the Tong Il minutes were false because "the minutes of the first meeting of the Board of Directors of Tong Il dated July 2, 1973 were changed on or about December, 1978." (Letter from Mr. Martin Flumenbaum to Mr. Charles Stillman, December 22, 1981.) The minutes of the Tong Il Board of Directors cited by the Government, however, were admittedly changed by a formal amendment to the minutes, as recorded in a letter dated December 27, 1978 from Mr. Francis Sogi, Esq. to Mr. Lewis Burgess, Vice President of Tong Il. GX. 1726-1729. [54] Tong Il's organizational meeting on July 2, 1973 was held at the beginning of a period of intensive Church activity. The latter months of 1973 were devoted to wide-ranging missionary efforts in the United States. [55] As a result, minutes of the organizational meeting drafted by Tong Il's attorney were not reviewed by Tong Il management officials until a much later date. When this review was finally completed, it was determined that certain corrections were necessary. These corrections, however, were requested in order to make the minutes more accurate, not with the intent to falsify them or obstruct the Government's investigation.

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[54] Mr. Sogi's letter stated:

> Dear Mr. Burgess:
>
> I have revised the last two pages of the minutes of the first meeting of the Board of Directors of Tong Il Enterprises, Inc. which was held on July 2, 1973 to reflect the resolutions which were actually passed at that meeting.

In this connection it should be noted that the revision of corporate minutes originally drafted by laymen is a common and accepted business practice, as is a certain amount of delay in recording such minutes.

It was never disputed that the 1978 changes to the July 2, 1973 minutes added a statement to the effect that merchandise valued at $55,500 had been contributed by the Unification Church of New York to Tong Il, representing the value of the stock subsequently issued to Reverend Moon. Although this change was made in late December, 1978, it was supported by an April 3, 1973 letter from Mr. Joe Tully, President of the Unification Church of New York to

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[55] During cross examination, Mr. Keith Cooperrider stated:

> A: [Beginning in 1973] we had several tours, a seven city tour, a 21 city tour, a 32 city tour, a 40 city tour, and they are fast moving. The 32 city tour was only two days in each state and then he would go on to another state. There would be a dinner and a speech the next night, maybe 2,000 people at the speech. He (*i.e.*, Reverend Moon) was working very hard at that time and we were growing very rapidly. We sent pioneers out to fifty states.

T. 4371.

Mr. Kamiyama, the sole promoter of Tong Il. The Government argued that this letter had been backdated and that it may have been written in early 1974, but the Government never disputed that the inventory was actually transferred at the stated time.

Indeed, the Government's original indictment alleged that the stock which Reverend Moon received "was received in part in consideration for approximately $55,000 worth of merchandise imported from Korea and paid for by letters of credit issued against a bank account at the County Trust Bank in the name of UCNY [*i.e.*, Unification Church of New York]." (Count One -- 12(b), October 15, 1981 Indictment.) Moreover, even if the April 3, 1973 letter was written in early 1974, that event would have been at least two years before the Internal Revenue Service investigation began. Thus, the letter could not have been backdated in furtherance of a conspiracy to obstruct the Government's investigation of Reverend Moon's tax practices. Finally, as noted earlier, there was no attempt to conceal the fact that the changes to the minutes had been made, nor was there any evidence whatsoever that the changes did not accurately reflect the actual events which occurred at that Board meeting.

2. The Allegedly False Loan Agreements Reflected Actual Transactions.

Similarly, the indictment alleged that certain loan agreements submitted to the Department of Justice on

June 22, 1981 in conjunction with an affidavit executed by Mr. Kamiyama were false and misleading. (Count One -- 13(w); Count Seven -- 22; Count Eight -- 23, October 15, 1981 Indictment.) The Government subsequently argued that these documents were false because they "were backdated and were created in order to account for monies deposited into Moon's bank accounts." (Letter of Mr. Martin Flumenbaum to Mr. Charles Stillman, dated February 5, 1982, p. 2.) It was never disputed, however, that the funds subject to the loan agreements were in fact transferred to the Church's Chase Manhattan Bank accounts.

While the defendants did not dispute that four of the eight loan agreements were signed after the dates indicated thereon, [56/] the Government insisted upon introducing evidence to that effect. The Government, however, failed to produce any evidence demonstrating that the loan agreements did not reflect transactions which had actually occurred. By contrast, the defense introduced evidence which indicated that the documents did memorialize genuine prior events. Thus, the Government relied primarily

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[56/] Indeed, Mr. Kamiyama acknowledged during his Grand Jury testimony that certain of the loan agreements were backdated.

on the suspicion which resulted from the fact that some of the loan agreements were backdated, rather than attempting to establish beyond a reasonable doubt that the documents were false because the events reflected therein did not occur.

3. The Family Fund Ledger Was Not Assembled in Order to Thwart the Government's Investigation.

The Family Fund Ledger, which was prepared by a Church member, Ms. Yukiko Matsumura ("Ms. Matsumura"), listed the dates and amounts of contributions from Japanese Church members between June, 1972 and March, 1976. The Ledger also set forth the contributor's name; date of arrival in the United States; disbursements from the Fund; and a running balance. Among the disbursements listed in the Ledger were transactions corresponding with certain deposits in the Church's Chase Manhattan Bank accounts. With respect to three of these disbursements, the records of the bank indicated that the deposits were not in cash, but rather were checks unrelated to the Family Fund. On the basis of these entries, the Government asserted that the entire document was false and that it was constructed after the fact to account for deposits into the Chase Manhattan Bank accounts:

> The so-called Family Fund Ledgers were created in late 1976 or early 1977 for the purpose of falsely accounting (a) for funds deposited into Moon's

> bank accounts at Chase Manhattan Bank and (b) for funds used personally by Kamiyama.

A. 676. The Government further argued that it would prove "that these documents are false and fraudulent by showing, among other things, that specific disbursements from the 'Family Fund' which are supposedly deposited into Moon's accounts, could not have been so deposited."

This theory, in its entirety, was based upon the four checks deposited into the Chase Manhattan Bank accounts. The Government claimed that these checks could not have originated with the Family Fund because that fund was composed solely of cash assets. Similarly, the Government claimed that the Ledger was false because certain corrections were pasted over original entries. [57] As discussed below, however, in view of the circumstances surrounding the preparation and submission of the Family Fund Ledger and the evidence of substantial cash contributions from Japanese Church members introduced during the trial, the entries relied upon by the Government do not support the Government's argument concerning the source of the Family Fund, nor do they demonstrate that the Ledger was intentionally falsified.

During the period beginning in early 1973 through 1976, the accounting functions relating to the Japanese

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[57] See, e.g., T. 6197-6212.

Family Fund were performed by three different Church members. Initially, Mr. Rikio Yamamoto was responsible for the Fund. He continued to perform accounting functions until July, 1973. At this time Ms. Yoko Yamanishi assumed responsibility for the Fund. Ms. Yamanishi, who performed the accounting functions for approximately five months, turned over that responsibility to Ms. Tomoko Torii in November of 1973.

Both Ms. Yamanishi and Ms. Torii's recorded various transactions informally by making notations on scraps of paper. These were provided to Ms. Yukiko Matsumura, when she assumed responsibility for the Family Fund in 1976. [58] Ms. Matsumura was the individual who subsequently prepared the Family Fund Ledger based on these notes.

During 1973 to 1976, Mr. Kenji Onuki served as a chauffeur and personal assistant to Reverend Moon. In this capacity, Mr. Onuki was asked on several occasions to transport deposits from the Family Fund to the Chase Manhattan Bank accounts. Mr. Onuki was also asked on several occasions to assist Church members by cashing checks for them. He did so by presenting these checks to the person responsible for administering the Family Fund. [59/] Mr. Onuki was then given cash from the Fund in exchange for these checks. These checks were subsequently included with the cash deposites made in the Chase accounts. Mr. Kamiyama, however, was not informed of this practice and in fact believed that all of the deposits made in the Chase accounts from the Family Fund were made in cash.

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[58] See, Declaration of Tomoko Torii, attached hereto as Supplemental Exhibit 2.

Although the original contributions to the Japanese Family Fund were thus made in cash, as a result of the transactions described above, some of the deposits made to the Chase accounts also included checks. To the extent that these checks represented original cash contributions, their inclusion in the Chase deposits contradicts the Government argument that the entire Family Fund was false and that the Fund did not in fact exist.

Ms. Matsumura submitted the Family Fund Ledger to the Justice Department with an affidavit which stated that she assumed responsibility for the Family Fund beginning in March, 1976 and that she prepared the Family Fund Ledger based on records given to her by the Church's former bookkeeper, Ms. Torii. [60/] In this affidavit, Ms. Matsumura stated that while she could not recall when the documents

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[59/] See, Declaration of Kenji Onuki, attached hereto as Supplemental Exhibit 3.

[60/] See, Notes 57 and 58, supra.

submitted with the affidavit were prepared, the last entry on the Family Fund Ledger was March 24, 1976, therefore, she thought that that was the date on which it was prepared. Ms. Matsumura also acknowledged in her affidavit that several corrections had been made to the Ledger after she prepared it.[61] These corrections were made in August, 1977 at the suggestion of Mr. Robert H. Elliott, Jr. ("Mr. Elliott"), a tax attorney with the Washington, D.C. law firm of Caplin & Drysdale. Mr. Elliott first reviewed the Ledger in June, 1977 and together with an accountant, discovered several mistakes. Ms. Matsumura subsequently corrected these mistakes by pasting new entries over the original ones. All corrections to the Ledger, however, were made with the advice of Mr. Elliott, and were not designed to mislead the Government or otherwise obstruct its investigation.

During the trial, Ms. Matsumura testified that she had subsequently reconstructed the events surrounding the preparation of the Ledger and concluded that it had been prepared in either December, 1976 or January, 1977. She explained that it had been suggested when she first assumed responsibility for the Ledger in March of 1976 that she assemble a single ledger combining all of the materials which had previously been prepared by several different people. The Church was occupied with numerous religious activities at that time, however, and she could not prepare the Ledger. She further explained that in May, 1976 the Church was preparing for a rally at Yankee Stadium, followed by a rally in front of the Washington Monument on September 18, 1976, and that she was responsible for assisting more than 250 Church members who had arrived from Japan. Thus, until these Church members returned to Japan in the latter part of 1976, she was unable to begin work on the Family Fund Ledger. T. 4640-4642.

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[61] Obviously such corrections would not have been openly acknowledged if the Family Fund Ledger had been prepared with fraudulent intent. Moreover, if the Ledger had been intended to mislead the Government, a revised Ledger document would have been developed, incorporating the changes suggested by counsel. In this manner, corrections to the Ledger would not have been apparent, as were the changes made by pasting over the original entires.

The Government argued that Ms. Matsumura had sworn in her affidavit that she made the Ledger in March, 1976, contrary to her trial testimony that she had created the Ledger in December, 1976 or early 1977, after the criminal tax investigation had been initiated. (Brief for the United States of America, U.S. Court of Appeals, p. 41.) As noted earlier, however, the Government's allegation that Ms. Matsumura's statements were false is contradicted by her affidavit, in which she admitted that she could not recall the exact date she prepared the Ledger, but rather assumed that it had been assembled in March, 1976.

The Government charged, moreover, that the funds described in the Ledger were not received entirely from Japanese Church members. The prosecution thus argued that "an inference [could] be drawn from certain phony entries in [the] document that the entire document was created at a different time for the sole purpose of obstructing justice and is fraudulent." P. 204. The Court emphasized, however, "even if that is so, it doesn't mean the people didn't contribute the money." P. 204. Indeed, the Court questioned the very logic of the Government's theory, noting: ". . . it is not clear to me why you say that . . . non-Japanese funds went into this Family Fund, which at the same time you don't acknowledge ever existed." P. 214. (Emphasis added.) These admonitions are particularly relevant in light of the fact that the funds reflected in the Ledger were primarily in the form of cash, and were therefore not directly traceable. Even Mr. Flumenbaum admitted at trial that he was not certain where the vast majority of the funds originated. [62]

In summary then, the prosecution pursued its obstruction of justice case through inuendo, suspicion and the creation of illusory disputes. While the defendants acknowledged that the Family Fund Ledger had been constructed from fragmentary contemporaneous memoranda and had been corrected in several particulars, the Government insisted upon belaboring the point that the Ledger had been constructed after the fact and corrected. The Government did not establish, however, that the Ledger was incorrect or intentionally misleading. Indeed, the evidence clearly demonstrates that the Family Fund Ledger was accurate, produced ~~openly,~~ and corrected where necessary on the advise of counsel.

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[62] See, T. 4868. See also, T. 4874, 4876-4877.

F. The False Swearing and Obstruction of Justice and Conspiracy Charges Against Mr. Kamiyama Were the Decisive Factor in the Government's Decision to Prosecute Reverend Moon.

As demonstrated above, Mr. Kamiyama did not testify falsely before the Grand Jury as alleged by the Government. Neither were the various financial documents submitted to the Justice Department surreptitiously altered in order to impede the Government's investigation of Reverend Moon. The importance of these points cannot be overemphasized, because the final decision to prosecute Reverend Moon based solely upon such false swearing, obstruction of justice and related conspiracy charges. In several well-considered memoranda prepared by career attorneys, the Justice Department originally concluded that Reverend Moon should not be prosecuted. This initial decision was reversed, however, in a half-page memorandum based entirely upon the Government's unwarranted assertion that Mr. Kamiyama had testified falsely before the Grand Jury and had proferred false and misleading documents to the Justice Department in an effort to thwart its investigation. The Government thus implicitly assumed that these actions were taken at the direction of Reverend Moon. [63]

Following the initial investigation of Reverend Moon by the Tax Division of the Justice Department, a meeting was held between attorneys for Reverend Moon and Mr. Kamiyama and Tax Division attorneys on June 22 and June 23, 1981. In conjunction with this meeting, several documents were submitted to the Tax Division by the defendants' attorneys. Based upon a review of these documents, as well as the Grand Jury investigation conducted during June and July of 1981, the Tax Division attorney prepared an eleven-page memorandum recommending that Reverend Moon not be prosecuted. [64] This decision was apparently prompted by the concern that the prosecution would not be able to prove that Reverend Moon was connected with any efforts to obstruct justice, and because Reverend Moon might have been entitled to a large charitable contribution deduction not claimed on his tax returns, which would have resulted in little or no tax liability. [65] This memorandum was subsequently reviewed by a senior official in the Criminal Section of the Tax Division who agreed in a three-page memorandum issued August 17, 1981, that prosecution of Reverend Moon was not advisable. Finally, on August 20, 1981, the Chief of the Tax Division's Criminal Section agreed that the prosecution should be declined.

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[63] The only Church member who testified for the Government consistently stated that he was not told to lie by Reverend Moon:

> Q: [MR. STILLMAN]: Did [Reverend Moon] call you in and say, "Michael, here's what I want you to say to the SEC?"
>
> Did he do that?
>
> A: [MR. WARDER]: No.
>
> * * *
>
> Q: [MR. STILLMAN]: The fact of the matter is he did not [ask you to lie] isn't that correct?
>
> A: [MR. WARDER]: He did not, you are right.

T. 5262.

On August 21, 1981, however, Mr. Flumenbaum wrote to the then Acting Deputy Assistant Attorney General for the Tax Division, recommending that Reverend Moon and Mr. Kamiyama both be prosecuted. Mr. Flumenbaum's letter pointed out that new "evidence" had been discovered which conclusively proved that Mr. Kamiyama had testified falsely before the Grand Jury and that the documents submitted to the Justice Department had been created or altered in order to obstruct the Government's investigation. This memorandum set forth specific examples of Mr. Kamiyama's allegedly perjurious statements before the Grand Jury. Shortly thereafter, Mr. Flumenbaum visited Washington, D.C. and personally presented his arguments to the Justice Department in support of his recommendation that the prosecution be authorized. Subsequently, on September 10, 1981, in a half-page memorandum, the Acting Deputy Assistant Attorney General for the Tax Division, Mr. Gilbert Andrews, approved criminal proceedings against both Reverend Moon and Mr. Kamiyama.

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[64] This memorandum was issued August 4, 1981.

[65] For the years in question (i.e., 1973-75) even without this deduction, Reverend Moon incurred no tax liability in 1973, and only $5,000 for 1974 and $2,300 for 1975.

Essentially then, the erroneous and improper charges asserted by the Government against Mr. Kamiyama directly precipitated the prosecution of Reverend Moon. As indicated by the various preliminary prosecution memoranda, the Government's evidence of criminal tax violations by Reverend Moon was tenuous at best. The prosecution therefore concentrated its efforts upon developing a fictional conspiracy, presumably directed by Reverend Moon, to obstruct the Government's investigation. The principal elements of this alleged conspiracy were Mr. Kamiyama's purportedly false testimony and the documents submitted to the Justice Department. It is thus doubly significant that the erroneous and contrived nature of the charges against Mr. Kamiyama be recognized by the public at large.

G. Conclusion.

In summary, Mr. Kamiyama did not testify falsely before the Grand Jury or submit false documents to the Justice Department. Thus, no conspiracy existed to defraud the Government. Mr. Kamiyama's prosecution rather, derived specifically from the Government's willful or blatantly negligent retention of an incompetent Grand Jury interpreter. The Government, in selecting this interpreter, completely ignored the standards established by the Court Interpreters Act, as well as its own obligation to provide Mr. Kamiyama with a qualified interpreter as a matter of fundamental fairness.

The improprieties connected with this faulty selection were inevitably compounded by the prosecutor's steadfast, unjustified and unreasonable refusal to substitute admittedly more accurate post-hoc translations of Mr. Kamiyama's Grand Jury testimony for the original interpretation set forth in the indictment. The Government, fully apprised of the fundamentally defective nature of the Grand Jury interpretation, and ordered by the Court to delete portions thereof from the indictment, nevertheless proceeded to utilize that interpretation as the basis for its charges against Mr. Kamiyama. At no point, moreover, did the Government disclose existing evidence of the interpreters incompetence to the Grand Jury or Mr. Kamiyama. By these actions, the Government callously disregarded Mr. Kamiyama's constitutional rights and demonstrated its eagerness to continue this prosecution irrespective of the cost.

These improper false swearing charges, moreover, were combined with equally spurious allegations pertaining to the falsity of documents submitted to the Justice Department in order to develop a "conspiracy" which served as a pretext for the prosecution of Reverend Moon. The Government, however, failed to produce evidence demonstrating that the relevant documents were substantively incorrect or inaccurate. Instead, the prosecution claimed that an inference of falsity could be drawn from the mere fact that the documents were backdated or reconstructed. Reconstruction, however, is not necessarily indicative of false content. This is particularly true where, as here, the reconstructions were open and acknowledged, rather than surreptitious, and the original materials were prepared by laymen, unaccustomed to American financial and legal practices. The trial record, in fact, is devoid of any evidence of substantive falsity. Neither Mr. Kamiyama, nor any Church member, accordingly, submitted false documents to the Government. Indeed, the trial record reflects that

Reverend Moon did not request his followers to lie in their dealings with the Government.

The Government, however, used this totally fictional conspiracy theory as a basis for the introduction of highly prejudicial evidence pertaining to the religious practices of the Unification Church and the role of Reverend Moon within Unification theology. It cannot be overemphasized that such matters of faith must remain inviolate if the religious freedom guaranteed by the First Amendment is to be preserved. Above all, it should not be within the province of Government to turn sincerely held religious beliefs against their adherents in a court of law, essentially utilizing such beliefs to pave the way to the penitentiary.

For all these reasons, the prosecution of Reverend Moon and Mr. Kamiyama takes on an exceedingly ominous character. Yet, it is hoped that this description of the proceedings against Mr. Kamiyama and the earlier comments relating to Reverend Moon's trial will foster a continuing public discussion of these vital issues, which will serve to strengthen the fundamental American concept of unfettered religious liberty.

Respectfully submitted,

Edward F. Canfield

Edward F. Canfield
Robert E. Heggestad
Mark S. Weiss

For the Unification Church of
America

December 10, 1984

Casey, Scott & Canfield, P.C.
Attorneys at Law

420 Washington Building
1435 G Street, N.W.
Washington, D.C. 20005
(202) 783-6490

December 28, 1984

Honorable Orrin G. Hatch
Subcommittee on the Constitution
United States Senate Committee
on the Judiciary
Suite 135, Russell Building
Washington, D.C. 20510

Dear Mr. Chairman:

The enclosed memorandum is intended to summarize the various issues raised by the separate written comments previously submitted on behalf of the Unification Church of America on August 15, 1984 and on December 10, 1984. Because of the length of these submissions, we felt that it might be helpful to include this document as an introductory summary in the hearing record. This document is intended to present a broad overview of the proceedings against Reverend Moon and Mr. Kamiyama and to demonstrate the interdependence of the charges brought against each. The summary demonstrates that the prosecution of Mr. Kamiyama had a crucial impact upon the trial and conviction of Reverend Moon.

As set forth in detail in the comments which have been previously submitted, the facts surrounding the joint prosecution of Reverend Moon and Mr. Kamiyama lead inevitably to the conclusion that the government's case against them constituted nothing less than a indictment and trial of the Unification Church, its members and theological tenets. We believe that the implications of this joint prosecution are critically relevant to the issues of religious liberty currently being reviewed by the Subcommittee.

Sincerely,

Edward F. Canfield

Edward F. Canfield

EFC:cs
Enclosure

Casey, Scott & Canfield, P.C.
Attorneys at Law

420 Washington Building
1435 G Street, N.W.
Washington, D.C. 20005
(202) 783-6490

BACKGROUND & SUMMARY

The Prejudicial Effect of the Joint Prosecution and Trial Of Reverend Sun Myung Moon and Takeru Kamiyama

On August 15, 1984, written comments were submitted to the United States Senate Subcommittee on the Constitution (Committee on the Judiciary) detailing the prejudicial impact of the circumstances surrounding the prosecution and trial of Reverend Sun Myung Moon, founder and spiritual leader of the international Unification Church movement ("Unification Church movement"). More recently, supplemental comments addressing the prosecution of Reverend Moon's co-defendant, Mr. Takeru Kamiyama were forwarded to the Subcommittee for inclusion in its formal hearing record. These documents demonstrate the fundamental impropriety of the prosecution of Reverend Moon and the interdependence of the proceedings against both defendants.

The separate comments submitted to the Subcommittee should be read together for the reasons set forth below. Thus integrated, they demonstrate that the proceedings against Reverend Moon and Mr. Kamiyama ultimately constituted a singular coordinated attack upon the international Unification Church movement.

Reverend Moon was convicted of Conspiracy and Subscribing to False Federal Income Tax Returns on July 16, 1982, following a six week jury trial. The same jury, sitting in the Southern District of New York, also convicted Mr. Kamiyama of Conspiracy, False Swearing, Obstruction of Justice and Submission of False Documents. Mr. Kamiyama, a long-standing associate of Reverend Moon, had been a financial advisor for the international Unification Church movement.

The proceedings in this case were the result of an extensive Internal Revenue Service audit of Reverend Moon's personal finances between 1973 and 1975, formally initiated on October 12, 1976. While this audit lasted for several years and ultimately involved an investigation of Unification Church movement assets, the audit indicated that Reverend Moon was not liable for any excess federal income tax in 1973 and that he was liable for only $5,000 and $2,300 excess federal income tax in 1974 and 1975 respectively. However, even this minimal tax liability, as asserted by the government, should not have been attributed to Reverend Moon because the assets at issue were the property of the Unification Church movement. Had the government properly recognized this fact in preparing its calculations, Reverend Moon would not have been subject to any tax liability whatsoever for the years in question. Because the amounts claimed by the government would not normally have justified a prosecution for tax evasion, the government relied upon an abstract theory charging Reverend Moon with subscribing to materially false Federal Income Tax Returns. In doing so, the government successfully utilized an initial allegation of minimal tax liability in order to support a major tax prosecution.

Because the government's investigation of Reverend Moon disclosed a paucity of evidence of any wrongdoing, prosecution of Reverend Moon was initially rejected by the Department of Justice. The initial favorable determination, however, was reversed when the Assistant United States Attorney responsible for Reverend Moon's case, Mr. Martin Flumenbaum, personally presented the Tax Division with purported "evidence" of perjury and submission of false documents by Mr. Kamiyama. This unusual step reflected Mr. Flumenbaum's overriding determination to pursue criminal charges against Reverend Moon and Mr. Kamiyama. This determination was manifested, moreover, in comments to Justice Department colleagues, reported in the "American Lawyer":

> [Mr.] Mark Pomerantz [an Assistant United States Attorney] remembers that when the prosecutors returned from a trip to the Justice Department in Washington to argue for authorization on the Moon indictment, Flumenbaum turned down a ride back to the New York courthouse from the airport this way: 'If they don't want to authorize prosecution, I'll take the subway back to Paul, Weiss.' [*i.e.*, his prior employer.] [1/]

Mr. Flumenbaum's allegations against Mr. Kamiyama, used to support the decision to go forward with this prosecution, grew out of Mr. Kamiyama's appearance before a Federal Grand Jury investigating Reverend Moon's finances. Mr. Kamiyama was summoned before the Grand Jury on July 9, 16 and 21, 1981 because of his familiarity with the financial interests of the Unification Church movement. Due to Mr. Kamiyama's lack of fluency in English, however, his testimony before the Grand Jury was interpreted by Mr. John Mochizuki, a Japanese-English interpreter retained by Mr. Flumenbaum.

Although he knew that Mr. Kamiyama's testimony would be a vital element of the government's case against Reverend Moon, Mr. Flumenbaum, in selecting an interpreter for Mr. Kamiyama, did not attempt to consult with Court officials normally responsible for the retention of interpreters. Moreover, in selecting his own interpreter, Mr. Flumenbaum did not even comply with the basic requirements of the Court Interpreters Act of 1978. This Act mandates the appointment of qualified interpreters for parties and witnesses not proficient in the English language in actions brought by the Federal government. Thus, the

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[1/] *See*, *American Lawyer*, November, 1982.

interpreter selected by Mr. Flumenbaum was not certified for court interpretation, and indeed, was classified by the Department of State as being qualified only for informal "escort" type summary interpretation. Predictably, then, Mr. Mochizuki's interpretation was gravely inaccurate. This fact was repeatedly confirmed both prior to the return of the final indictment and thereafter. Mr. Flumenbaum, in fact, was provided with accurate translations of the Grand Jury proceedings prepared by a court-appointed translator and an independent translator whom he, himself, retained. He ignored these translations, however, and insisted upon charging Mr. Kamiyama with six counts of false swearing before the Grand Jury based upon the original misinterpretation of his testimony.

The "evidence" which led to the reversal of the Tax Division's decision not to prosecute Reverend Moon, accordingly, was based upon a misinterpretation of Mr. Kamiyama's testimony -- a misinterpretation which the government encouraged through the retention of an uncertified, incompetent interpreter. Properly interpreted, Mr. Kamiyama's testimony was not perjurious. The record demonstrates, moreover, that because of Mr. Mochizuki's misinterpretation and ignorance of court proceedings, Mr. Kamiyama was not properly sworn as a witness, a necessary prerequisite to a perjury prosecution. Similarly, because of Mr. Mochizuki's inexperience with legal proceedings, Mr. Kamiyama was not given effective perjury and Fifth Amendment warnings. Thus, by appointing an incompetent interpreter, the government allowed Mr. Kamiyama to fall into a linguistic perjury trap resulting in the allegedly false testimony which was used by the prosecution to support the conspiracy theory which had been developed. With this "evidence" of fraudulent action, Mr. Flumenbaum successfully secured authorization for the prosecution and ultimate conviction of both defendants.

The charge that one of Reverend Moon's closest advisors had committed perjury and had submitted false documents to the Justice Department had an obvious prejudicial impact on this proceeding. Similarly, the allegations against Mr. Kamiyama provided the government with a means by which inflammatory evidence could be introduced in support of the alleged conspiracy. In order to exploit this evidence, the government insisted upon a trial before a jury which would be more susceptible to such prejudicial evidence than would be a judge presiding in a bench trial. It did so with knowledge that a public poll had confirmed that a substantial portion of the general public held an unfavorable image of the international Unification Church movement and even though both defendants had requested a non-jury trial. The Court, while expressing misgivings over the government's action, ignored this indisputable evidence of hostile public opinion regarding the Unification Church movement and denied defendants' request for non-jury trial.

Once it successfully secured a jury trial, the government attempted to take advantage of the known preconceptions and biases of the jurors by introducing highly prejudicial and irrelevant evidence. For example, by demonstrating the intense faith and devotion of adherents to Unification theology, the prosecution sought to establish that Church members would go to any length to protect Reverend Moon -- including the commission of illegal and conspiratorial acts. This information clearly would have been inadmissible had Reverend Moon been tried alone. The Court, nevertheless, permitted the evidence to be admitted, accepting the government's argument that such evidence was necessary to support the general and vague conspiracy alleged in the indictment. Mr. Kamiyama's presence, therefore, served to convert a trial involving narrow questions of tax and trust principles into a trial of the Unification Church movement itself.

In conclusion, the record reveals that the prosecution and conviction of Reverend Moon were motivated and supported by governmental bias toward the international Unification Church movement. As the leader of that movement, Reverend Moon was selectively prosecuted for financial practices which have been readily accepted when utilized by established religions in the United States. The government thus used Reverend Moon as a scapegoat and used his prosecution in order to establish a precedent for government intrusion into the affairs of religious groups. Indeed, as Reverend Moon himself noted in a speech given several days following his indictment: "I would not be standing here today if my skin were white and my religion were Presbyterian. I am here today only because my skin is yellow and my religion is Unification Church." [2] This conclusion is supported by the fact that the government spent several hundred thousand dollars in order to prosecute a tax deficiency which even according to its own calculations was less than $8,000 during the 3-year period in question. Both defendants were thus subjected to manifold injustices, including violations of their Fifth Amendment right to a fair trial and standards of due process which are the proper concern of the Subcommittee and all responsible citizens.

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[2] This speech, given in front of the United States courthouse at Foley Square in New York City, was later cited by the government as the basis for its decision to refuse the defendants' request for a non-jury trial.

LIST OF EXHIBITS

Exhibit	Description
A	Court Interpreters Act -- Public Law 95-539, 95th Congress, October 28, 1978
B	Congressional Record -- House, October 10, 1978; Legislative History of Court Interpreters Act
C	Affidavit of Robert E. Heggestad re conversation with Jack Leeth, Administrative Office of United States Courts
D	Affidavit of Robert E. Heggestad re conversation with Manabu Fukuda, Interpreting Branch of the Language Services Division of the United States Department of State
E	Affidavit of Robert E. Heggestad re conversation with Dina Kohn, Director of the United States District Court Interpreters Office in New York
F	Letter dated October 9, 1984 to Takeru Kamiyama from William R. Ratchford, Member of Congress, Fifth District, Connecticut
G	Letter dated October 3, 1984 to Honorable William R. Ratchford from William E. Foley, Director, Administrative Office of the United States Courts
H	Letter dated September 28, 1984 to Takeru Kamiyama from Ron Paul, Member of Congress
I	Affidavit of Takeru Kamiyama
J	Michiko Kosaka -- Translator's Notes and Translations
K	Kinko Sato's Brief Personal History
L	Interview of Mr. Eisuke Sasagawa on His Re-Translation of the Grand Jury Hearing of Mr. Takeru Kamiyama by Attorney Kinko Sato, August 25, 1984
M	Report of Kinko Sato entitled "On the Grand Jury Investigation of Mr. Kamiyama's Conduct in Connection with Suspected Violation of Tax Laws" dated July 18, 1984
Supplemental Exhibit 1	Declaration of John Hinds
Supplemental Exhibit 2	Declaration of Tomoko Torii
Supplemental Exhibit 3	Declaration of Kenji Onuki
Supplemental Exhibit 4	Declaration of Yukiko Matsumura

EXHIBIT A

Public Law 95-539
95th Congress

An Act

Oct. 28, 1978
[S. 1315]

To provide more effectively for the use of interpreters in courts of the United States, and for other purposes.

Court Interpreters Act.
28 USC 1 note.
28 USC 1827.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Court Interpreters Act".

SEC. 2. (a) Chapter 119 of title 28, United States Code, is amended by adding at the end thereof the following new sections:

"§ 1827. Interpreters in courts of the United States

"(a) The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of interpreters in courts of the United States.

Annual report.

Fee schedule.

"(b) The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters in courts of the United States in bilingual proceedings and proceedings involving the hearing impaired (whether or not also speech impaired), and in so doing, the Director shall consider the education, training, and experience of those persons. The Director shall maintain a current master list of all interpreters certified by the Director and shall report annually on the frequency of requests for, and the use and effectiveness of, interpreters. The Director shall prescribe a schedule of fees for services rendered by interpreters.

"(c) Each United States district court shall maintain on file in the office of the clerk of court a list of all persons who have been certified as interpreters, including bilingual interpreters and oral or manual interpreters for the hearing impaired (whether or not also speech impaired), by the Director of the Administrative Office of the United States Courts in accordance with the certification program established pursuant to subsection (b) of this section.

"(d) The presiding judicial officer, with the assistance of the Director of the Administrative Office of the United States Courts, shall utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter, in any criminal or civil action initiated by the United States in a United States district court (including a petition for a writ of habeas corpus initiated in the name of the United States by a relator), if the presiding judicial officer determines on such officer's own motion or on the motion of a party that such party (including a defendant in a criminal case), or a witness who may present testimony in such action—

"(1) speaks only or primarily a language other than the English language; or

"(2) suffers from a hearing impairment (whether or not suffering also from a speech impairment)

so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness' comprehension of questions and the presentation of such testimony.

"(e)(1) If any interpreter is unable to communicate effectively with the presiding judicial officer, the United States attorney, a party (including a defendant in a criminal case), or a witness, the presiding judicial officer shall dismiss such interpreter and obtain the services of another interpreter in accordance with this section.

"(2) In any criminal or civil action in a United States district court, if the presiding judicial officer does not appoint an interpreter under subsection (d) of this section, an individual requiring the services of an interpreter may seek assistance of the clerk of court or the Director of the Administrative Office of the United States Courts in obtaining the assistance of a certified interpreter.

Waiver, approval and consultation.

"(f)(1) Any individual other than a witness who is entitled to interpretation under subsection (d) of this section may waive such interpretation in whole or in part. Such a waiver shall be effective only if approved by the presiding judicial officer and made expressly by such individual on the record after opportunity to consult with counsel and after the presiding judicial officer has explained to such individual, utilizing the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter, the nature and effect of the waiver.

"(2) An individual who waives under paragraph (1) of this subsection the right to an interpreter may utilize the services of a noncertified interpreter of such individual's choice whose fees, expenses, and costs shall be paid in the manner provided for the payment of such fees, expenses, and costs of an interpreter appointed under subsection (d) of this section.

Salaries, fees, and expenses.
Post, p. 2041.

"(g)(1) Except as otherwise provided in this subsection or section 1828 of this title, the salaries, fees, expenses, and costs incident to providing the services of interpreters under subsection (d) of this section shall be paid by the Director of the Administrative Office of the United States Courts from sums appropriated to the Federal judiciary.

"(2) Such salaries, fees, expenses, and costs that are incurred with respect to Government witnesses shall, unless direction is made under paragraph (3) of this subsection, be paid by the Attorney General from sums appropriated to the Department of Justice.

"(3) The presiding judicial officer may in such officer's discretion direct that all or part of such salaries, fees, expenses, and costs shall be apportioned between or among the parties or shall be taxed as costs in a civil action.

"(4) Any moneys collected under this subsection may be used to reimburse the appropriations obligated and disbursed in payment for such services.

"(h) In any action in a court of the United States where the presiding judicial officer establishes, fixes, or approves the compensation and expenses payable to an interpreter from funds appropriated to the Federal judiciary, the presiding judicial officer shall not establish, fix, or approve compensation and expenses in excess of the maximum allowable under the schedule of fees for services prescribed pursuant to subsection (b) of this section.

"Presiding judicial officer."

"(i) The term 'presiding judicial officer', as used in this section and section 1828 of this title includes a judge of a United States district court, a United States magistrate, and a referee in bankruptcy.

"United States district court."
Infra.

28 USC 132.

"(j) The term 'United States district court' as used in this section and section 1828 of this title includes any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States established by section 132 of this title.

"(k) The interpretation provided by certified interpreters pursuant to this section shall be in the consecutive mode except that the presiding judicial officer, with the approval of all interested parties, may authorize a simultaneous or summary interpretation when such officer determines that such interpretation will aid in the efficient administration of justice. The presiding judicial officer on such officer's motion or on the motion of a party may order that special interpretation services as authorized in section 1828 of this title be provided if such officer determines that the provision of such services will aid in the efficient administration of justice.

28 USC 1828.

"§ 1828. Special interpretation services

Program establishment.

"(a) The Director of the Administrative Office of the United States Courts shall establish a program for the provision of special interpretation services in criminal actions and in civil actions initiated by the United States (including petitions for writs of habeas corpus initiated in the name of the United States by relators) in a United States district court. The program shall provide a capacity for simultaneous interpretation services in multidefendant criminal actions and multidefendant civil actions.

"(b) Upon the request of any person in any action for which special interpretation services established pursuant to subsection (a) are not otherwise provided, the Director, with the approval of the presiding judicial officer, may make such services available to the person requesting the services on a reimbursable basis at rates established in conformity with section 501 of the Act of August 31, 1951 (ch. 376, title 5, 65 Stat. 290; 31 U.S.C. 483a), but the Director may require the prepayment of the estimated expenses of providing the services by the person requesting them.

Expenses.

"(c) Except as otherwise provided in this subsection, the expenses incident to providing services under subsection (a) of this section shall be paid by the Director from sums appropriated to the Federal judiciary. A presiding judicial officer, in such officer's discretion, may order that all or part of the expenses shall be apportioned between or among the parties or shall be taxed as costs in a civil action, and any moneys collected as a result of such order may be used to reimburse the appropriations obligated and disbursed in payment for such services.

"(d) Appropriations available to the Director shall be available to provide services in accordance with subsection (b) of this section, and moneys collected by the Director under that subsection may be used to reimburse the appropriations charged for such services. A presiding judicial officer, in such officer's discretion, may order that all or part of the expenses shall be apportioned between or among the parties or shall be taxed as costs in the action.".

(b) The table of sections for chapter 119 of title 28, United States Code, is amended by adding at the end thereof the following:

"1827. Interpreters in courts of the United States.
"1828. Special interpretation services.".

SEC. 3. Section 604(a) of title 28, United States Code, is amended—

(a) by striking out paragraph (10) and inserting in lieu thereof:

"(10)(A) Purchase, exchange, transfer, distribute, and assign the custody of lawbooks, equipment, supplies, and other personal property for the judicial branch of Government (except the Supreme Court unless otherwise provided pursuant to paragraph (17)); (B) provide or make available readily to each court appropriate equipment for the interpretation of proceedings in accordance with section 1828 of this title; and (C) enter into and perform contracts and other transactions upon such terms as the Director may deem appropriate as may be necessary to the conduct of the work of the judicial branch of Government (except the Supreme Court unless otherwise provided pursuant to paragraph (17)), and contracts for nonpersonal services for pretrial services agencies, for the interpretation of proceedings, and for the provision of special interpretation services pursuant to section 1828 of this title may be awarded without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5);";

Ante, p. 2041.

(b) by redesignating paragraph (13) as paragraph (17); and

(c) by inserting after paragraph (12) the following new paragraphs:

Interpreter programs, establishment.
Ante, p. 2039.

"(13) Pursuant to section 1827 of this title, establish a program for the certification and utilization of interpreters in courts of the United States;

"(14) Pursuant to section 1828 of this title, establish a program for the provision of special interpretation services in courts of the United States;

"(15)(A) In those districts where the Director considers it advisable based on the need for interpreters, authorize the full-time or part-time employment by the court of certified interpreters; (B) where the Director considers it advisable based on the need for interpreters, appoint certified interpreters on a full-time or part-time basis, for services in various courts when he determines that such appointments will result in the economical provision of interpretation services; and (C) pay out of moneys appropriated for the judiciary interpreters' salaries, fees, and expenses, and other costs which may accrue in accordance with the provisions of sections 1827 and 1828 of this title;

"(16) In the Director's discretion, (A) accept and utilize voluntary and uncompensated (gratuitous) services, including services as authorized by section 3102 of title 5, United States Code; and (B) accept, hold, administer, and utilize gifts and bequests of personal property for the purpose of aiding or facilitating the work of the judicial branch of Government, but gifts or bequests of money shall be covered into the Treasury;".

SEC. 4. Section 604 of title 28, United States Code, is amended further by inserting after subsection (e) the following new subsections:

Conduct standards, rules and regulations.
Publication in Federal Register.

"(f) The Director may make, promulgate, issue, rescind, and amend rules and regulations (including regulations prescribing standards of conduct for Administrative Office employees) as may be necessary to carry out the Director's functions, powers, duties, and authority. The Director may publish in the Federal Register such rules, regulations, and notices for the judicial branch of Government as the Director determines to be of public interest; and the Director of the Federal Register hereby is authorized to accept and shall publish such materials.

Exchanges or sales, evidence.

"(g)(1) When authorized to exchange personal property, the Director may exchange or sell similar items and may apply the exchange allowance or proceeds of sale in such cases in whole or in part payment for the property acquired, but any transaction carried out under the authority of this subsection shall be evidenced in writing.

Contracts.

"(2) The Director hereby is authorized to enter into contracts for public utility services and related terminal equipment for periods not exceeding ten years.".

SEC. 5. Section 602 of title 28, United States Code, is amended to read as follows:

"§ 602. Employees

Compensation.

5 USC 5101 et seq., 5331.

"(a) The Director shall appoint and fix the compensation of necessary employees of the Administrative Office in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates.

Ante, p. 2042.

"(b) Notwithstanding any other law, the Director may appoint certified interpreters in accordance with section 604(a)(15)(B) of this title without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates, but the compensation of any person appointed under this subsection shall not exceed the appropriate equivalent of the highest rate of pay payable for the highest grade established in the General Schedule, section 5332 of title 5.

"(c) The Director may obtain personal services as authorized by section 3109 of title 5, at rates not to exceed the appropriate equivalent of the highest rate of pay payable for the highest grade established in the General Schedule, section 5332 of title 5.

Authority delegations.

"(d) All functions of other officers and employees of the Administrative Office and all functions of organizational units of the Administrative Office are vested in the Director. The Director may delegate any of the Director's functions, powers, duties, and authority (except the authority to promulgate rules and regulations) to such officers and employees of the judicial branch of Government as the Director may designate, and subject to such terms and conditions as the Director may consider appropriate; and may authorize the successive redelegation of such functions, powers, duties, and authority as the Director may deem desirable. All official acts performed by such officers and employees shall have the same force and effect as though performed by the Director in person.".

SEC. 6. Section 603 of title 28, United States Code, is amended by striking out the second paragraph thereof.

Taxation of costs.

SEC. 7. Section 1920 of title 28, United States Code, is amended by striking out the period at the end of paragraph (5) and inserting a semicolon in lieu thereof and by inserting after paragraph (5) the following new paragraph:

> "(6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.".

Repeal.
28 USC 602 note.

SEC. 8. Section 5(b) of the Act of September 23, 1959 (Public Law 86-370, 73 Stat. 652), is repealed.

SEC. 9. There are authorized to be appropriated to the judicial branch of Government such sums as may be necessary to carry out the amendments made by this Act.

Appropriation authorization.

SEC. 10. (a) Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act.

Effective dates.
28 USC 602 note.

(b) Section 2 of this Act shall take effect ninety days after the date of the enactment of this Act.

SEC. 11. Any contracts entered into under this Act or any of the amendments made by this Act shall be limited to such extent or in such amounts as are provided in advance in appropriation Acts.

28 USC 602 note.

Approved October 28, 1978.

LEGISLATIVE HISTORY:

SENATE REPORT No. 95-569 (Comm. on the Judiciary).
CONGRESSIONAL RECORD:
Vol. 123 (1977): Nov. 4, considered and passed Senate.
Vol. 124 (1978): Oct. 10, H.R. 14030 considered and passed House; passage vacated and S. 1315, amended, passed in lieu.
Oct. 13, Senate concurred in House amendment.

EXHIBIT B

October 10, 1978

CONGRESSIONAL RECORD—HOUSE

34877–34883

S. 3373

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 151 of title 10, United States Code, is amended by adding after section 2544 the following new section:

"§ 2545. Transportation services: international Girl Scout events

"(a) The Secretary of Defense is authorized, under such regulations as he may prescribe, to provide, without expense to the United States Government, transportation from the United States or military commands overseas, and return, on vessels of the Military Sealift Command or aircraft of the Military Airlift Command for (1) those Girl Scouts and officials certified by the Girl Scouts of the United States of America as representing the Girl Scouts of the United States of America at any International World Friendship Event or Troops on Foreign Soil meeting which is endorsed and approved by the National Board of Directors of the Girl Scouts of the United States of America and is conducted outside of the United States, (2) United States citizen delegates coming from outside of the United States to triennial meetings of the National Council of the Girl Scouts of the United States of America, and (3) the equipment and property of such Girl Scouts and officials, to the extent that such transportation will not interfere with the requirements of military operations.

"(b) Before furnishing any transportation under subsection (a), the Secretary of Defense shall take from the Girl Scouts of the United States of America a good and sufficient bond for the reimbursement to the United States by the Girl Scouts of the United States of America, of the actual costs of transportation furnished under subsection (a).

"(c) Amounts paid to the United States to reimburse it for the actual costs of transportation furnished under subsection (a) shall be credited to the current applicable appropriation or funds to which such costs were charged and shall be available for the same purposes as such appropriations or funds.".

SEC. 2. The table of sections at the beginning of chapter 151 of title 10, United States Code, is amended by adding after the item relating to section 2544 the following new item:

"2545. Transportation services: international Girl Scout events.".

The SPEAKER pro tempore. Is a second demanded?

Mrs. HOLT. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Mississippi (Mr. MONTGOMERY) will be recognized for 20 minutes, and the gentlewoman from Maryland (Mrs. HOLT) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Mississippi (Mr. MONTGOMERY).

Mr. MONTGOMERY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 3373 will give the Secretary of Defense the authority to provide transportation on military aircraft to Girl Scouts, and officials of the Girl Scouts, to attend their international events.

In more concrete terms, the bill simply says that less than 200 Girl Scouts per year will be able to attend international functions of the Girl Scout organization by traveling on Department of Defense aircraft.

The authority in this bill is identical to that now provided to Boy Scouts and would be at no cost to the Government since all assistance is expressly conditioned upon reimbursement for the services provided by the Girl Scouts.

Assistance is limited to international travel, and is available only to Girl Scouts who are U.S. citizens. It should also be noted that transportation may be provided only to the extent that it does not interfere with the requirements of military operations.

The administration is in support of this legislation.

Mr. Speaker, the authority contained in this legislation simply extends the same transportation assistance to Girl Scouts as is now provided the Boy Scouts—no more, no less. This is not legislation of broad impact but it will help the Girl Scout program and I urge the Members to support it.

Mrs. HOLT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of S. 3373.

On seven separate occasions in the past prior to 1972, the Congress had authorized the Secretary of Defense to provide transportation to Boy Scouts in connection with Boy Scout jamborees. Finally, in 1972, permanent authority was enacted.

In the case of the Girl Scouts, however, although the Congress has passed specific legislation twice in the past for certain events, no permanent grant of authority has been enacted.

S. 3373 does this.

It would be inequitable to continue to provide assistance, limited though it is, to the Boy Scout program but not the Girl Scouts.

There will be no cost to the Government by this action since the provision of transportation is predicated upon full reimbursement by the Girl Scouts for this assistance.

If this bill is enacted, no more than 200 Girl Scouts a year would seek transportation assistance to attend certain important international meetings, such as International World Friendship Events.

This legislation passed the Senate unanimously and was reported favorably by the Committee on Armed Services by a vote of 28 to 1.

I hope the Members will support this legislation.

● Mr. CARR. Mr. Speaker, I rise in opposition to the bill S. 3373. This bill was rammed through the House Armed Services Committee without hearings. It was brought to the full committee by unanimous consent. Had I known that this bill would be brought to the House floor under suspension of the rules, I would have objected to the full committee consideration of the bill without hearings. During the full committee proceedings I offered an amendment in the nature of a substitute to the bill. Consideration of this bill now on the Suspension Calendar now prevents me from offering my amendment on the House floor. This bill seeks to redress an inequity between the Boy and Girl Scouts in their eligibility to travel on military flights on a space available basis. At the same time this bill fails to address the inequity between the Scouts and other worthy and congressionally chartered youth organizations such as 4-H, Big Brothers, and Big Sisters.

Girl Scouts should not be added by name to the statute. Boy Scouts should be dropped from the statute by name. In its place an omnibus provision should be enacted to allow all nonprofit, educational youth organizations to apply to the Secretary of State for transportation from the DOD on foreign flights. The Secretary would be charged with making the determination as to whether the transportation was in the interests of the United States.

Mr. Speaker, I urge the defeat of this bill until the committee can hold hearings and address the complete area of youth organization military travel in a comprehensive way. I understand that the chairman of the committee, Mr. White, also has some questions about the liability coverage for accidents occurring on such flights.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Mississippi (Mr. MONTGOMERY) that the House suspend the rules and pass the Senate bill, S. 3373.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MONTGOMERY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

INTERPRETERS IN U.S. COURTS

Mr. EDWARDS of California. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 14030) to provide more effectively for the use of interpreters in courts of the United States, and for other purposes, as amended.

H.R. 14030

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Court Interpreters Act".

Sec. 2. (a) Chapter 119 of title 28, United States Code, is amended by adding at the end thereof the following new sections:

"§ 1827. Interpreters in courts of the United States

"(a) The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of interpreters in courts of the United States.

"(b) Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters in courts of the United States in bilingual proceedings and proceedings involving the hearing impaired (whether or not also speech impaired), and in so doing, the Director shall consider the education, training, and experience of those persons. The Director shall maintain a current master list of all interpreters certified by the Director and shall report annually on the frequency of requests for, and the use and effectiveness of, interpreters. The Director shall prescribe a schedule of fees for services rendered by interpreters.

"(c) Each United States district court shall maintain on file in the office of the clerk of court a list of all persons who have been certified as interpreters, including bilingual interpreters and oral or manual interpreters for the hearing impaired (whether or not also speech impaired), by the Director of the Administrative Office of the United States Courts in accordance with the certification program established pursuant to subsection (b) of this section.

"(d) The presiding officer, with the assistance of the Director of the Administrative Office of the United States Courts, shall utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter, in any criminal or civil action initiated by a United States district court (including a petition for a writ of habeas corpus initiated in the name of the United States by a relator), if the presiding judicial officer determines on such officer's own motion or on the motion of a party that such party (including a defendant in a criminal case), or a witness who may present testimony in such action—

"(1) speaks only or primarily a language other than the English language; or

"(2) suffers from a hearing impairment (whether or not suffering also from a speech impairment)

so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness' comprehension of questions and the presentation of such testimony.

"(e)(1) If any interpreter is unable to communicate effectively with the presiding judicial officer, the United States attorney, a party (including a defendant in a criminal case), or a witness, the presiding judicial officer shall dismiss such interpreter and obtain the services of another interpreter in accordance with this section.

"(2) In any criminal or civil action in a United States district court, if the presiding judicial officer does not appoint an interpreter under subsection (d) of this section, an individual requiring the services of an interpreter may seek assistance of the clerk of court or the Director of the Administrative Office of the United States Courts in obtaining the assistance of a certified interpreter.

"(f)(1) Any individual other than a witness who is entitled to interpretation under subsection (d) of this section may waive such interpretation in whole or in part. Such a waiver shall be effective only if approved by the presiding judicial officer and made expressly by such individual on the record after opportunity to consult with counsel and after the presiding judicial officer has explained to such individual, utilizing the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter, the nature and effect of the waiver.

"(2) An individual who waives under paragraph (1) of this subsection the right to an interpreter many utilize the services of a noncertified interpreter of such individual's choice whose fees, expenses, and costs shall be paid in the manner provided for the payment of such fees, expenses, and costs of an interpreter appointed under subsection (d) of this section.

"(g)(1) Except as otherwise provided in this subsection or section 1828 of this title, the salaries, fees, expenses, and costs incident to providing the services of interpreters under subsection (d) of this section shall be paid by the Director of the Administrative Office of the United States Courts from sums appropriated to the Federal judiciary.

"(2) Such salaries, fees, expenses, and costs that are incurred with respect to Government witnesses shall, unless direction is made under paragraph (3) of this subsection, be paid by the Attorney General from sums appropriated to the Department of Justice.

"(3) The presiding judicial officer may in such officer's discretion direct that all or part of such salaries, fees, expenses, and costs shall be apportioned between or among the parties or shall be taxed as costs in a civil action.

"(4) Any moneys collected under this subsection may be used to reimburse the appropriations obligated and disbursed in payment for such services.

"(h) In any action in a court of the United States where the presiding judicial officer establishes, fixes, or approves the compensation and expenses payable to an interpreter from funds appropriated to the Federal judiciary, the presiding judicial officer shall not establish, fix, or approve compensation and expenses in excess of the maximum allowable under the schedule of fees for services prescribed pursuant to subsection (b) of this section.

"(i) The term 'presiding judicial officer' as used in this section and section 1828 of this title includes a judge of a United States district court, a United States magistrate, and a referee in bankruptcy.

"(j) The term 'United States district court' as used in this section and section 1828 of this title includes any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States established by section 132 of this title.

"(k) The interpretation provided by certified interpreters pursuant to this section shall be in the consecutive mode except that the presiding judicial officer, with the approval of all interested parties, may authorize a simultaneous or summary interpretation when such officer determines that such interpretation will aid in the efficient administration of justice. The presiding judicial officer on such officer's motion or on the motion of a party may order that special interpretation services as authorized in section 1828 of this title be provided if such officer determines that the provision of such services will aid in the efficient administration of justice.

"§ 1828. Special interpretation services.

"(a) The Director of the Administrative Office of the United States Courts shall establish a program for the provision of special interpretation services in criminal actions and in civil actions initiated by the United States (including petitions for writs of habeas corpus initiated in the name of the United States by relators) in a United States district court. The program shall provide a capacity for simultaneous interpretation services in multidefendant criminal actions and multidefendant civil actions.

"(b) Upon the request of any person in any action for which special interpretation services established pursuant to subsection (a) are not otherwise provided, the Director, with the approval of the presiding judicial officer, may make such services available to the person requesting the services on a reimbursable basis at rates established in conformity with section 501 of the Act of August 31, 1951 (ch. 376, title 5, 65 Stat. 290; 31 U.S.C. 483a), but the Director may require the prepayment of the estimated expenses of providing the services by the person requesting them.

"(c) Except as otherwise provided in this subsection, the expenses incident to providing services under subsection (a) of this section shall be paid by the Director from sums appropriated to the Federal judiciary. A presiding judicial officer, in such officer's discretion, may order that all or part of the expenses shall be apportioned between or among the parties or shall be taxed as costs in a civil action, and any moneys collected as a result of such order may be used to reimburse the appropriations obligated and disbursed in payment for such services.

"(d) Appropriations available to the Director shall be available to provide services in accordance with subsection (b) of this section, and moneys collected by the Director under that subsection may be used to reimburse the appropriations charged for such services. A presiding judicial officer, in such officer's discretion, may order that all or part of the expenses shall be apportioned between or among the parties or shall be taxed as costs in the action.".

(b) The table of sections for chapter 119 of title 28, United States Code, is amended by adding at the end thereof the following:

"1827. Interpreters in courts of the United States.

"1828. Special interpretation services.".

Sec. 3. Section 604(a) of title 28, United States Code, is amended—

(a) by striking out paragraph (10) and inserting in lieu thereof:

"(10) (A) Purchase, exchange, transfer, distribute, and assign the custody of lawbooks, equipment, supplies, and other personal property for the judicial branch of Government (except the Supreme Court unless otherwise provided pursuant to paragraph (17)); (B) provide or make available readily to each court appropriate equipment for the interpretation of proceedings in accordance with section 1828 of this title; and (C) enter into and perform contracts and other transactions upon such terms as the Director may deem appropriate as may be necessary to the conduct of the work of the judicial branch of Government (except the Supreme Court unless otherwise provided pursuant to paragraph (17)), and contracts for nonpersonal services for pretrial services agencies, for the interpretation of proceedings, and for the provision of special interpretation services pursuant to section 1828 of this title may be awarded without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5);";

(b) by redesignating paragraph (13) as paragraph (17); and

(c) by inserting after paragraph (12) the following new paragraphs:

"(13) Pursuant to section 1827 of this title, establish a program for the certification and utilization of interpreters in courts of the United States;

"(14) Pursuant to section 1828 of this title, establish a program for the provision of special interpretation services in courts of the United States;

"(15)(A) In those districts where the Director considers it advisable based on the need for interpreters, authorize the full-time or part-time employment by the court of certified interpreters; (B) where the Director considers it advisable based on the need for interpreters, appoint certified interpreters on a full-time or part-time basis, for services in various courts when he determines that such appointments will result in the economical provision of interpretation services; and (C) pay out of moneys appropriated for the judiciary interpreters' salaries, fees, and expenses, and other costs which may accrue in accordance with the provisions of sections 1827 and 1828 of this title;

"(16) In the Director's discretion, (A) accept and utilize voluntary and uncompensated (gratuitous) services, including services as authorized by section 3102 of title 5, United States Code; and (B) accept, hold, administer, and utilize gifts and bequests of personal property for the purpose of aiding or facilitating the work of the judicial branch of Government, but gifts or bequests of money shall be covered into the Treasury;".

SEC. 4. Section 604 of title 28, United States Code, is amended further by inserting after subsection (e) the following new subsections:

"(f) The Director may make, promulgate, issue, rescind, and amend rules and regulations (including regulations prescribing standards of conduct for Administrative Office employees) as may be necesary to carry out the Director's functions, powers, duties, and authority. The Director may publish in the Federal Register such rules, regulations, and notices for the judicial branch of Government which as the Director determines to be of public interest; and the Director of the Federal Register hereby is authorized to accept and shall publish such materials.

"(g)(1) When authorized to exchange personal property, the Director may exchange or sell similar items and may apply the exchange allowance of proceeds of sale in such cases in whole or in part payment for the property acquired, but any transaction carried out under the authority of this subsection shall be evidenced in writing.

"(2) The Director hereby is authorized to enter into contracts for public utility services and related terminal equipment for periods exceeding ten years.".

SEC. 5. Section 602 of title 28, United States Code, is amended to read as follows:

§ 602. Employees

"(a) The Director shall appoint and fix the compensation of necessary employees of the Administrative Office in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates.

"(b) Notwithstanding any other law, the Director may appoint certified interpreters in accordance with section 604(a)(15)(B) of this title without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates, but the compensation of any person appointed under this subsection shall not exceed the appropriate equivalent of the highest rate of pay payable for the highest grade established in the General Schedule, section 5332 of title 5.

"(c) The Director may obtain personal services as authorized by section 3109 of title 5, at rates not to exceed the appropriate equivalent of the highest rate of pay payable for the highest grade established in the General Schedule, section 5332 of title 5.

"(d) All functions of other officers and employees of the Administrative Office and all functions of organizational units of the Administrative Office are vested in the Director. The Director may delegate any of the Director's functions, powers, duties, and authority (except the authority to promulgate rules and regulations) to such officers and employees of the judicial branch of Government as the Director may designate, and subject to such terms and conditions as the Director may consider appropriate; and may authorize the successive redelegation of such functions, powers, duties, and authority as the Director may deem desirable. All official acts performed by such officers and employees shall have the same force and effect as though performed by the Director in person.".

SEC. 6. Section 603 of title 28, United States Code, is amended by striking out the second paragraph thereof.

SEC. 7. Section 1920 of title 28, United States Code, is amended by striking out the period at the end of paragraph (5) and inserting a semicolon in lieu thereof and by inserting after paragraph (5) the following new paragraph:

"(6) Compensation of court appointed experts, ompensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.".

SEC. 8. Section 5(b) of the Act of September 23, 1959 (Public Law 86-370, 73 Stat. 652), is repealed.

SEC. 9. There are authorized to be appropriated to the judicial branch of Government such sums as may be necessary to carry out the amendments made by this Act.

SEC. 10. (a) Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act.

(b) Section 2 of this Act shall take effect ninety days after the date of the enactment of this Act.

SEC. 11. Any contracts entered into under this Act or any of the amendments made by this Act shall be limited to such extent or in such amounts as are provided in advance in appropriation Acts.

The SPEAKER pro tempore. Is a second demanded?

Mr. LIVINGSTON. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California (Mr. EDWARDS) will be recognized for 20 minutes, and the gentleman from Louisiana (Mr. LIVINGSTON) will be recognized for 20 minutes.

The Chair recognizes the gentleman from California (Mr. EDWARDS).

Mr. EDWARDS of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 14030, which creates the Court Interpreters Act, is designed to insure that all individuals in Federal proceedings are provided with a certified interpreter if their communication or comprehension capabilities are inhibited because of a language barrier or hearing impairment.

Under this bill, the Director of the Administrative Office of the U.S. Courts is charged with the responsibility of establishing and certifying the qualifications of persons who may serve as interpreters in Federal district courts. When a presiding judicial officer determines, in a civil or criminal proceeding initiated by the United States, that the services of an interpreter are required under this act, such officer shall then give preference in appointment to the most available certified interpreter. If no such interpreter is available then an otherwise competent interpreter may be appointed. Waiver of the right to appointment of a certified interpreter is permitted, with the court's approval, in limited situations. In such cases, the individual may then utilize the services of a noncertified interpreter of such individual's choice.

Lastly, H.R. 14030 provides that payment of interpreter's services, in cases initiated by the United States, be made by the Director of the Administrative Office of the U.S. Courts from funds appropriated to the Federal judiciary or by the U.S. Attorney General from funds appropriated to the Department of Justice. In such civil actions, the costs incident to providing the services of an interpreter shall be apportioned among the parties or taxed as costs unless the court, in its discretion, orders that the costs be borne by the Government.

The Congressional Budget Office estimates that, assuming funds for fiscal year 1979 are appropriate half way through the fiscal year, the first year cost of this bill will be approximately $1.4 million. The second year cost is estimated at $2.1 million, with additional, minor increases over the following 3 years to allow for inflationary factors which the Budget Office has projected. The Congressional Budget Office figures are based on a "guessestimate" submitted by the Administrative Office of the U.S. Court. These figures appear to be inflated and it is anticipated that, upon enactment of this bill, the Administrative Office will revise its estimate downward based on the limiting language set forth in the committee report.

The Senate has passed similar legislation this Congress and I have been informed that the Senate sponsor of that bill (Senator DECONCINI) will accept the House amendments as reflected in H.R. 14030. I urge my colleagues to join me in voting for this legislation so that due process will finally become a reality, in Federal district courts, for individuals with language barriers or hearing impairments.

The sponsor of this bill, the Honorable FRED RICHMOND, is unable to be here this morning. Congressman RICHMOND has worked very vigorously or behalf of this legislation. He has particularly championed the cause of the hearing impaired which have been neglected by the judicial system.

● Mr. MOORHEAD of California. Mr. Speaker, H.R. 14030 accomplishes two related and long overdue purposes. First, the bill directs the director of the administrative office of the U.S. Courts to certify the qualifications of persons who may serve as interpreters in Federal courts.

This includes interpreters for persons whose primary language is not English and persons with hearing impairments. This applies to all parties in a criminal action or a civil action initiated by the United States.

The Subcommittee on Civil and Constitutional Rights heard 3 days of testimony citing incidents where judges have refused to provide interpreters for those with speech and hearing impairments constituting a serious denial of due process of the law. Under current law, the Federal rules provide that the court may appoint an interpreter of its own selection and may fix the reasonable compensation for the interpreter. This bill would simply make in order at any point during the proceedings a motion by the court or by one of the parties for the services of an interpreter.

Only if counsel disagrees on the party's ability to speak and comprehend English would there be a need for a formal proceeding to make an initial determination of the need for an interpreter. Thus, the judge still has the authority and the responsibility to make the determination, but he must select an interpreter, if one is available, from the certified list maintained by the Director of the Administrative Office of the U.S. Courts. The subcommittee has urged strongly that interpretation be conducted in the consecutive rather than by simultaneous mode. A simultaneous mode uses a U.N.-type machine at a very high cost.

While the Administrative Office of the U.S. Courts estimates that they will have to add a few full-time interpreters to their present small staff of 11, most of the interpreters will work on a contract basis when their services are needed. Thus, the Budget Office estimates this legislation will cost less than $2 million.

Finally, parties may waive this new right to interpretation but such waiver can only be made after the presiding judicial officer has explained the waiver to the party.

We have departed from current law by asking the Government to pay for these services. Previously, Government supply and pay for the interpreter was only in the case of an indigent criminal defendant. However, it seems to me that the role played by the interpreter is so basic to the fundamental principles of justice that it should be a service offered as a cost of court maintenance, not a cost of litigation.●

● Mr. RICHMOND. Mr. Speaker, as author of H.R. 14030 I would like to take this opportunity to briefly explain why all my colleagues should support this legislation that is needed to rectify a current injustice in our Federal court system.

The "Court Interpreters Act," which introduced in December 1977, attempts to remedy a grave inequity. This bill would insure that a qualified interpreter be present whenever a person who does not communicate in English is involved in a Federal court proceeding.

Deaf and non-English speaking Americans have been denied the fundamental right to a fair trial due to their inability to understand the court proceedings.

The Constitution guarantees every American access to the Federal courts through the fifth and sixth amendments. If language-handicapped Americans are not given the constitutionally established access to understand and participate in their own defense, then we have failed to carry out a fundamental American premise: fairness and due process for all.

At my request, the Congressional Research Service compiled information regarding the number of men, women, and children in the United States whose primary language is other than English. The total number of individuals whose primary language is not English is over 25,347,000. With the addition of the deaf community, the figure reaches 40 million.

Among these 40 million individuals, there are thousands, who, potentially, could benefit from this legislation.

Spanish speaking and deaf Americans comprise by far the largest numbers of people whose primary language is not English.

Of the more than 9.9 million Spanish-speaking Americans, over 2 million are Puerto Rican.

It is important to note that Puerto Rican Americans are not confined to New York. There are large numbers of Puerto Rican families in cities all across the Nation—as far away as Hawaii—with large communities in New Jersey, Pennsylvania, Massachusetts, Ohio, Illinois, California, and Florida.

Hispanic families are not the only ones who may suffer disadvantages as a result of court-related language disabilities.

Representatives of all nationalities contribute to American culture and economy. Yet, if they do not speak English they are at a gross disadvantage in court proceedings.

I am referring to millions of men and women whose primary language is not English:

15 million deaf people who use sign language or need oral interpretation.

9.9 million who speak Spanish.

2.8 million who speak Italian.

2.2 million who speak French.

2.2 million who speak German.

Half a million who speak Chinese.

Half a million who speak Japanese.

Almost half a million who speak Greek.

Almost 400,000 who speak Philippino.

Almost 350,000 who speak Portuguese.

And over 5½ million more speak "other" languages; including many thousands of native Americans.

The district which I represent—the 14th Congressional District of New York—is the most multi-ethnic district in the United States. Every country represented in the United Nations is represented in the 14th District.

Close to 20 percent of my constituents are Hispanic, the vast majority of whom are Puerto Rican. There is also a large number of families—at least 10 percent of my constituents—whose primary language is Hebrew or Yiddish.

In addition, in this highly diverse district, there are many families whose primary language is Italian, Greek, Polish, Hungarian, various Arabic languages, and dozens of other languages from every corner of the world.

Many of these people would benefit from this legislation.

Nationwide, even in courts where interpreters are available for individuals who need help with translation and interpretation, there is no uniform procedure for utilization of interpreters.

On July 13, 1978, a deaf man came before a U.S. Federal Magistrate in Greenbelt, Md., on criminal charges. This man, who can neither speak nor lip read, was denied the use of an interpreter.

In Boston, a deaf man was denied the use of an interpreter in Federal Tax Court. He could not afford to pay for the interpreter himself and his trial was postponed. The man moved to St. Paul where the trial was resumed and an interpreter finally appointed.

Last year, in Kansas a deaf man was denied the use of an interpreter during his Federal bankruptcy trial.

There have been a number of misinterpretations or no interpretations in cases involving Spanish-speaking defendants.

In the Negron case, the defendant, a 23-year-old Puerto Rican American with a sixth grade education, was provided with an interpreter who merely gave the defendant a purported summary in Spanish of what had previously transpired in English. No continuous interpretation was provided. Consequently, Mr. Negron was convicted of murder and incarcerated. He petitioned the Federal court for a writ of habeas corpus which was granted on the grounds that the interpreting at his trial was so inadequate as to deprive him of due process. He was thus released and given a new trial. (434 F. 2d 386 (2d cir. 1970)).

U.S. v. *Carrion*, 488 F. 2d 12 (1973), a case similar to Negron, reaffirmed the proposition that qualified interpreters as well as continuous interpretation should be provided when language barriers are obvious and the defendant is indigent.

Several Federal convictions were reversed on due process grounds where no interpreter had been appointed and where the accused's knowledge of English was minimal or nonexistent. (*U.S. ex rel Navarro* v. *Johnson*, 365 F. Supp. 676 (1973); 192 Cal. App. 2d 604; *Parra* v. *Page*, 430 P.2d 834 (1967)).

These are only a few of the cases which indicate the need for Federal legislation to set mandatory standards for the appointment of professional interpreters in our Federal courts.

The Administrative Office of the Courts estimates the cost of this legislation at less than $2 million annually. This seems to be a very small price to pay to insure equal justice for all.

I believe that this legislation will encourage State legislatures to enact similar legislation for the State and local courts where a considerable number of flagrant miscarriages of justice have occurred due to poorly qualified interpreters being used or no interpreters at all.

Consider for a moment that the 40 million people living in the United States today, whose primary language is not English, represent close to 20 percent of our population. Put together, over 80 Members of Congress would represent them alone. This is obviously a significant number of people who are asking,

not an unreasonable thing: that if they are ever involved in a Federal trial, they will be guaranteed the right to understand all the proceedings. In this great country of ours, the fact that they must even make such a request is a disgrace. I urge my colleagues to approve this legislation and bring an end to this grotesque judicial oversight.●

GENERAL LEAVE

Mr. EDWARDS of California. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 14030.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. LIVINGSTON. Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. EDWARDS) that the House suspend the rules and pass the bill, H. R.14030, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. EDWARDS of California. Mr. Speaker, on behalf of the Committee on the Judiciary, I ask unanimous consent that the Committee on the Judiciary be discharged from the further consideration of the Senate bill (S. 1315) to provide more effectively for the use of interpreters in courts of the United States, and for other purposes, and ask for immediate consideration of the Senate bill.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1315

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Bilingual, Hearing, and Speech Impaired Court Interpreter Act".

SEC. 2. (a) Chapter 119 of title 28, United States Code, is amended by adding at the end thereof the following new sections:

"§ 1827. Interpreters in courts of the United States

"(a) The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of interpreters in courts of the United States.

"(b) The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters in courts of the United States in bilingual proceedings and proceedings involving the hearing or speech impaired, and in so doing, the Director shall consider the education, training, and experience of those persons. The Director shall maintain a current master list of all interpreters certified by him and he shall report annually on the frequency of requests for, and the use and effectiveness of, interpreters. The Director shall prescribe a schedule of fees for services rendered by interpreters.

"(c) Each district court shall maintain on file in the office of the clerk of court a list of all persons who have been certified as interpreters (including bilingual interpreters and oral or manual interpreters for the hearing impaired and speech impaired) by the Director of the Administrative Office of the United States Courts in accordance with the certification program established pursuant to subsection (b) of this section.

"(d) In any criminal action or civil action initiated by the United States where the presiding judicial officer determines on his own motion or on the motion of a party that (i) a criminal defendant or a party speaks only a language other than the English language, suffers from a hearing impairment, or suffers from a speech impairment which will inhibit comprehension of the proceedings or communication with counsel and the presiding judicial officer, or (ii) in the course of such proceedings, testimony may be presented by any person who speaks only a language other then the English language, suffers from a hearing impairment, or suffers from a speech impairment which will inhibit comprehension of questions and presentation of testimony, the presiding judicial officer shall order that the necessary interpretation be provided and shall obtain the services of a certified interpreter for that party or person in accordance with subsection (e) of this section.

"(e)(1) In any action in a court of the United States where the services of an interpreter are to be utilized by the presiding judicial officer, the defendant, a party or non-Government witness, pursuant to a finding of need for interpreter services under subsection (d), the presiding judicial officer, with the assistance of the Director of the Administrative Office of the United States Courts, shall utilize the services of the most available certified interpreter, or when no certified interperter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter

"(2) In any action in a court of the United States where the services of an interpreter are to be utilized by the United States attorney for a Government witness, the United States attorney, with the assistance of the Director of the Administrative Office of the United States Courts, shall utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter.

"(3) If any interpreter is unable to communicate effectively with the presiding judicial officer, the United States attorney, the defendant, a party, or a witness, the presiding judicial officer shall dismiss such interpreter and obtain the services of another interpreter in accordance with the provisions of this subsection.

"(4) In all actions not covered by paragraph (1) of this subsection, the person requiring the services of an interpreter may seek assistance of the clerk of court or the Director of the Administrative Office of the United States Courts in obtaining the assistance of a certified interpreter.

"(f)(1) The defendant in any criminal action in a court of the United States, or a party in any civil action in a court of the United States, who is entitled to an interpretation pursuant to a finding of need for interpreter services under subsection (d) may waive the interpretation in whole or in part. Such a waiver must be (i) made expressly by the defendant or party upon the record after the opportunity to consult with counsel and after the presiding judicial officer has explained to the defendant or party, utilizing the services of an interpreter obtained in accordance with subsection (e) of this section, the nature and effect of the waiver, and (ii) approved by the presiding judicial officer.

"(2) A defendant or party who waives his right to an interpreter provided pursuant to subsection (d) may utilize the services of noncertified interpreter of the person's choice at personal expense.

"(g)(1) In criminal actions and civil actions initiated by the United States, the salaries, fees, expenses, and costs incident to providing the services of an interpreter pursuant to subsection (e)(1) of this section shall be paid by the Director from funds appropriated to the Federal judiciary: *Provided*, That a presiding judicial officer, in his discretion, may direct that all or part of the expenses shall be appropriated between or among the parties or shall be taxed as costs in a civil action.

"(2) In criminal actions and civil actions initiated by the United States, the salaries, fees, expenses, and costs incident to providing the services of an interpreter pursuant to subsection (e)(2) of this section shall be paid by the Attorney General from funds appropriated to the Department of Justice: *Provided*, That a presiding judicial officer, in his discretion, may direct that all or part of the expenses shall be apportioned between or among the parties or shall be taxed as costs in a civil action.

"(3) Any moneys collected pursuant to this subsection may be used to reimburse the appropriations obligated and disbursed in payment for such services.

"(h) In any action in a court of the United States where the presiding judicial officer establishes, fixes, or approves the compensation and expenses payable to an interpreter from funds appropriated to the Federal judiciary, the presiding judicial officer shall not establish, fix, or approve compensation and expenses in excess of the maximum allowable under the schedule of fees for services prescribed pursuant to subsection (b) of this section.

"(i) The term 'presiding judicial officer' as used in this section includes a judge of the United States, a United States magistrate, a referee in bankruptcy, and a judge in any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States.

"(j) The term 'court of the United States' as used in this section includes any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States.

"(k) The interpretation provided by certified interpreters pursuant to this section shall be in the consecutive mode except that the presiding judicial officer, with the approval of all interested parties, may authorize a summary interpretation when he determines that a summary interpretation will be adequate for the material to be interpreted.

"§ 1828. Special interpretation services

"(a) The Director of the Administrative Office of the United States Courts shall establish a program for the provision of special interpretation services in criminal actions and in civil actions initiated by the United States, when the provision of such services will aid in the efficient administration of justice. The program shall provide a capacity for simultaneous interpretation services in multidefendant criminal actions and multidefendant civil actions, and shall include necessary services for persons who speak only a language other than the English language, hearing impaired persons, and speech impaired persons. The presiding judicial officer on his motion or on the motion of a party may order the special interpretation services be provided.

"(b) Upon the request of any person in any action for which special interpretation services established pursuant to subsection (a) are not otherwise provided, the Director, with the approval of the presiding judicial officer, may make such services available to the person requesting the services on a reimbursable basis at rates established in conformity with section 501 of the Act of August 31, 1951 (ch. 376, title 5, 65 Stat. 290; 31 U.S.C. 483a): *Provided*, That the Director may require the prepayment of the estimated expenses of providing the services by the person requesting them.

"(c) The expenses incident to providing services pursuant to subsection (a) of this section shall be paid by the Director from funds appropriated to the Federal judiciary: *Provided*, That a presiding judicial officer, in his discretion, may direct that all or part of the expenses shall be apportioned between or among the parties or shall be taxed as costs in a civil action: *Provided further*, That any moneys collected pursuant to the first proviso of this subsection may be used to reimburse the appropriations obligated and disbursed in payment for such services.

"(d) Appropriations available to the Director shall be available to provide services in accordance with subsection (b) of this section: *Provided*, That moneys collected by the Director pursuant to that subsection may be used to reimburse the appropriations charged for such services: *Provided further*, That a presiding judicial officer, in his discretion, may direct that all or part of the expenses shall be apportioned between or among the parties or shall be taxed as costs in the action.

"(e) The term 'presiding judicial officer' as used in this section includes a judge of the United States, a United States magistrate, a referee in bankruptcy, and a judge in any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States.".

(b) The analysis of chapter 119 of title 28, United States Code, is amended by adding at the end thereof the following:

"1827. Interpreters in courts of the United States.

"1828. Special interpretation services.".

SEC. 3. Section 42 of the Puerto Rico Federal Relations Act (48 U.S.C. 864) is amended by striking out the last sentence of such section and inserting the following new sentences: "Initial pleadings in the United States District Court for the District of Puerto Rico may be filed in either the Spanish or English language and all further pleadings and proceedings shall be in the English language, unless upon application of a party or upon its own option, the court, in the interest of justice, orders that the further pleadings or proceedings, or any part thereof, shall be conducted in the Spanish language. The written orders and decisions of the court shall be in both the Spanish and English languages. If an appeal is taken of a trial or proceeding conducted in whole or part in the Spanish language, the record or necessary portions of it, shall be translated into the English language. The cost of the translation shall be paid by the district court or by the parties, as the judge may direct. All appellate documents shall be in the English language.

SEC. 4. (a) Chapter 121 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1869a. Language requirements in Commonwealth of Puerto Rico

"No person shall be disqualified for service on a grand or petit jury summoned in the Commonwealth of Puerto Rico solely because such person is unable to speak, read, write, and understand the English language if such person is able to speak, read, write and understand the Spanish language.".

(b)(1) Section 1865(b) of such title is amended by striking out "In making" and inserting in lieu thereof "Except as provided in section 1869a of this title, in making".

(2) Section 1869(h) of such title is amended by inserting after "English language" the following: "(except as provided in section 1869a of this title)".

(c) The analysis of such chapter 121 is amended by adding at the end thereof the following new item:

"1869a. Language requirements in Commonwealth of Puerto Rico.".

SEC. 5. Section 604(a) of title 28, United States Code, is amended—

(a) by striking out paragraph (10) and inserting in lieu thereof:

"(10)(A) Purchase, exchange, transfer, distribute, and assign the custody of lawbooks, equipment, supplies, and other personal property for the judicial branch of Government (except the Supreme Court unless otherwise provided pursuant to paragraph (17)); (B) provide or make available readily to each court appropriate equipment for the interpretation of proceedings in accordance with section 1828 of this title; and (C) enter into and perform contracts and other transactions upon such terms as he may deem appropriate as may be necessary to conduct the work of the judicial branch of Government (except the Supreme Court unless otherwise provided pursuant to paragraph (16)): *Provided*, That contracts for nonpersonal services for pretrial services agencies, for the interpretation of proceedings, and for the provision of special interpretation services pursuant to section 1828 of this title may be awarded without regard to section 3709 of the Revised Statutes of the United States, as amended (41 U.S.C. 5);";

(b) by redesignating paragraph (13) as paragraph (17); and

(c) by inserting after paragraph (12) the following new paragraphs:

"(13) Pursuant to section 1827 of this title, establish a program for the certification and utilization of interpreters in courts of the United States;

"(14) Pursuant to section 1828 of this title, establish a program for the provision of special interpretation services in courts of the United States;

"(15)(A) In those districts where the Director considers it advisable based on the need for interpreters, authorized the full-time or part-time employment by the court of certified interpreters; (B) where the Director considers it advisable based on the need for interpreters, appoint certified interpreters on a full-time or part-time basis for services in various courts when he determines that such appointments will result in the economical provision of interpretation services; and (C) pay out of moneys appropriated for the judiciary interpreters' salaries, fees and expenses, and other costs which may accrue in accordance with the provisions of sections 1827 and 1828 of this title;

"(16) In his discretion, (A) accept and utilize voluntary and uncompensated (gratuitous) services, including services as authorized by section 3102 of title 5, United States Code; and (B) accept, hold, administer, and utilize gifts and bequests of personal property for the purpose of aiding or facilitating the work of the judicial branch of Government: *Provided*, That gifts or bequests of money shall be covered into the Treasury:".

Sec. 6. Section 604 of title 28, United States Code, is amended further by inserting after subsection (e) the following new subsections:

"(f) The Director may make, promulgate, issue, rescind, and amend rules and regulations (including regulations prescribing standards of conduct for Administrative Office employees) as may be necessary to carry out his functions, powers, duties, and authority. The Director may publish in the Federal Register such rules, regulations, and notices for the judicial branch of Government which he determines to be of public interest; and the Director of the Federal Register hereby is authorized to accept and shall publish such materials.

"(g)(1) When authorized to exchange personal property, the Director may exchange or sell similar items and may apply the exchange allowance or proceeds of sale in such cases in whole or in part payment for the property acquired: *Provided*, That any transaction carried out under the authority of this subsection shall be evidenced in writing.

"(2) The Director hereby is authorized to enter into contracts for public utility services and related terminal equipment for periods not exceeding ten years.".

Sec. 7. Section 602 of title 28, United States Code, is amended by striking out the present section and inserting in lieu thereof the following:

"§ 602. Employees

"(a) The Director shall appoint and fix the compensation of necessary employees of the Administrative Office in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates.

"(b) Notwithstanding any other law, the Director may appoint certified interpreters in accordance with section 604(a)(15)(B) of this title without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5.

"(c) The Director may obtain personal services as authorized by section 3109 of title 5, United States Code, at rates for individuals not to exceed the daily equivalent of the highest rate payable under the General Schedule pay rates, section 5332 of title 5, United States Code, relating to classification and General Schedule pay rates: *Provided, however*, That the compensation of any person appointed under this subsection shall not exceed the annual rate of basic pay payable under the general schedule, section 5332 of title 5, United States Code.

"(d) All functions of other officers and employees of the Administrative Office and all functions of organizational units of the Administrative Office are vested in the Director. The Director may delegate any of his functions, powers, duties, and authority (except the authority to promulgate rules and regulations) to such officers and employees of the judicial branch of Government as he may designate, and subject to such terms and conditions as he may consider appropriate; and may authorize the successive redelegation of such functions, powers, duties, and authority as he may deem desirable. All official acts performed by such officers and employees shall have the same force and effect as though performed by the Director in person.".

Sec. 8. Section 603 of title 28, United States Code, is amended by striking the second paragraph thereof.

Sec. 9. Section 1920 of title 28, United States Code, is amended by inserting after paragraph (5) the following new paragraph:

"(6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.".

Sec. 10. Section 5(b) of the Act of September 23, 1959 (Public Law 86-370, 73 Stat. 652), is repealed.

Sec. 11. There are authorized to be appropriated to the judicial branch of Government such sums as may be necessary to carry out the amendments made by this Act.

Sec. 12. The amendments made by this Act shall take effect on October 1, 1978.

MOTION OFFERED BY MR. EDWARDS OF CALIFORNIA

Mr. EDWARDS of California. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Edwards of California moves to strike out all after the enacting clause of S. 1315, and to insert in lieu thereof the text of H.R. 14030, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to provide more effectively for the use of interpreters in courts of the United States, and for other purposes."

A motion to reconsider was laid on the table.

EASTERN TELEPHONE SUPPLY & MANUFACTURING, INC.

Mr. ULLMAN. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 1417) making in order consideration of Senate amendments to the bill (H.R. 10161) for the relief of Eastern Telephone Supply & Manufacturing, Inc.

The Clerk read the resolution as follows:

H. RES. 1417

Resolved, That immediately upon the adoption of this resolution the bill, H.R. 10161, for the relief of Eastern Telephone Supply and Manufacturing, Inc., together with the Senate amendments thereto be, and the same is hereby, taken from the Speaker's table to the end that (1) Senate amendment numbered 1 and the Senate amendment to the title of the bill are agreed to; and (2) Senate amendment numbered 2 is disagreed to.

The SPEAKER pro tempore. Is a second demanded?

Mr. CONABLE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The Chair recognizes the gentleman from New York (Mr. CONABLE).

Mr. CONABLE. Mr. Speaker, we concur with the chairman in accepting the Senate amendment to this House passed bill which would extend the existing duty suspension on imports of natural graphite. This Senate amendment was passed by the House as H.R. 10625. We also concur with the chairman in refusing to accept the Senate amendment on freight cars.

Mr. ULLMAN. Mr. Speaker, H.R. 10161 passed the House on August 1, 1978, and the Senate made no amendment to its provision, as approved by the House. However, the Senate added two substantive amendments as follows:

Amendment No. 1 includes the provisions of H.R. 10625, a bill to continue the duty suspension of natural graphite. This bill is noncontroversial and was passed by the House on September 18, 1978, by unanimous consent. Therefore, I recommend that the House concur in Senate amendment No. 1.

Mr. Speaker, there is controversy on Senate amendment No. 2—a proposal to temporarily suspend the duty on freight cars. The Subcommittee on Trade of the Committee on Ways and Means held a hearing on this proposal on September 29. Objections to this legislation have been received from the Railcar Manufacturers Association, a domestic producer, as well as a Member of Congress. Therefore, I recommend that Senate amendment No. 2 not be agreed to at this time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Oregon (Mr. ULLMAN) to suspend the rules and agree to the resolution, House Resolution 1417.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. CONABLE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation (H. Res. 1417) just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

DISPUTE RESOLUTION ACT

Mr. ECKHARDT. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 957) to promote commerce by establishing a national goal for the development and maintenance of effective, fair, inexpensive, and expeditious mechanisms for the resolution of consumer controversies, and for other purposes, as amended.

The Clerk read as follows:

S. 957

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "Dispute Resolution Act".

FINDINGS AND PURPOSE

Sec. 2. (a) The Congress finds and declares that—

(1) for the majority of Americans, mechanisms for the resolution of disputes involving consumer goods and services, as well as numerous other types of minor civil disputes, are largely unavailable, inaccessible, ineffective, expensive, or unfair;

(2) the inadequacies of dispute resolution mechanisms in the United States have resulted in dissatisfaction and many types of inadequately resolved grievances and disputes;

(3) each individual dispute, such as that between neighbors, a consumer and seller, and a landlord and tenant, for which adequate resolution mechanisms do not exist may be of relatively small social or economic magnitude, but taken collectively such disputes are of enormous social and economic consequence;

(4) there is a lack of necessary resources or expertise in many areas of the United States to develop new or improved consumer dispute resolution mechanisms, neighborhood dispute resolution centers, and other necessary dispute resolution mechanisms;

(5) the inadequacy of dispute resolution mechanisms throughout the United States is contrary to the general welfare of the people; and

(6) neighborhood, local, or community based dispute resolution mechanisms can provide and promote expeditious, inexpensive, equitable, and voluntary resolution of disputes, as well as serve as models for other dispute resolution mechanisms.

(b) It is the purpose of this Act to assist the States and other interested parties in providing to all persons convenient access to dispute resolution mechanisms which are effective, fair, inexpensive, and expeditious.

DEFINITIONS

Sec. 3. For purposes of this Act—

(1) the term "Advisory Board" means the Dispute Resolution Advisory Board established under section 7(a);

(2) the term "Attorney General" means the Attorney General of the United States;

(3) the term "Center" means the Dispute Resolution Resource Center established under section 6(a);

(4) the term "dispute resolution mechanism" means any court with jurisdiction over minor consumer disputes and other minor civil disputes, and any forum which provides for arbitration, mediation, conciliation, or any similar procedure, which is available to adjudicate, settle, or otherwise resolve any minor consumer disputes and any other minor civil disputes;

(5) the term "grant recipient" means any State or local government, any State or local governmental agency, and any nonprofit organization which receives a grant under section 8;

(6) the term "local" means of or pertaining to any political subdivision of a State; and

(7) the term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

CRITERIA FOR DISPUTE RESOLUTION MECHANISMS

Sec. 4. Any grant recipient which desires to use any financial assistance received under this Act in connection with establishing or maintaining a dispute resolution mechanism shall provide satisfactory assurances to the Attorney General that the dispute resolution mechanism will provide for—

(1) assistance to persons using the dispute resolution mechanism;

(2) the adjudication or resolution of disputes at times and locations which are convenient to persons the dispute resolution mechanism is intended to serve;

(3) adequate arrangements to facilitate use by persons who have difficulties communicating in English or who have physical disabilities;

(4) reasonable, fair, and readily understandable forms, rules, and procedures, which shall include those which—

(A) ensure that all parties to a dispute are directly involved in the resolution of the dispute, and that the resolution is adequately implemented;

(B) provide any easy way for any person to determine the proper name in which, and the proper procedure by which, any person may be made a party to a dispute resolution proceeding; and

(C) permit the use of dispute resolution mechanisms by the business community;

(5) the dissemination of information relating to the availability, location, and use of other redress mechanisms in the event that dispute resolution efforts fail or the dispute involved does not come within the jurisdiction of the dispute resolution mechanism;

(6) consultation and cooperation with the community and with governmental agencies; and

(7) a public information program which effectively and economically communicates to potential users the availability and location of the dispute resolution mechanism.

LEGISLATIVE HISTORY
P.L. 95–539

COURT INTERPRETERS ACT

(*P.L. 95–539] see page (92 Stat. 2040*

**Senate Report (Judiciary Committee) No. 95–569,
Nov. 1, 1977 [To accompany S. 1315]**

**House Report (Judiciary Committee) No. 95–1687,
Oct. 4, 1978 [To accompany H.R. 14030]**

Cong. Record Vol. 123 (1977)

Cong. Record Vol. 124 (1978)

DATES OF CONSIDERATION AND PASSAGE

Senate November 4, 1977; October 13, 1978

House October 10, 1978

The Senate bill was passed in lieu of the House bill after amending its language to contain the text of the House bill.

The House Report is set out.

HOUSE REPORT NO. 95–1687

[page 1]

The Committee on the Judiciary, to whom was referred the bill (H.R. 14030) to provide more effectively for the use of interpreters in courts of the United States, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

* * * * * * * * *

[page 2]

EXPLANATION OF AMENDMENTS

The committee amendments defer the effective date of the provisions of the bill and correct printing errors.

PURPOSE

The purpose of H.R. 14030 is to require the appointment of interpreters, who have been certified by the Director of the Administrative Office of the U.S. Courts, in Federal civil and criminal proceedings under specified conditions. H.R. 14030 makes additional substantive and technical changes to provide more effectively for the use of interpreters in Federal district courts, to comply with changes in the law and for other purposes.

HISTORY OF THE LEGISLATION

The Subcommittee on Civil and Constitutional Rights held three days of hearings [1] regarding this legislation (formerly H.R. 10228) and its Senate counterpart, S. 1315, during which testimony was received from 14 witnesses.

On August 17, 1978, the subcommittee unanimously ordered H.R. 14030 favorably reported, as amended, to the full Committee on the Judiciary. The full committee considered H.R. 14030 and on September 26, 1978, by a voice vote, ordered that it be reported favorably, as amended, to the House.

GENERAL STATEMENT

During the 93d Congress, the Senate Judiciary Subcommittee on Improvements in Judicial Machinery held 2 days of hearings regarding legislation (S. 1724) which mandated the use of court interpreters in the Federal courts. S. 1724 was then amended to include provisions affecting the pleadings and proceedings of the U.S. District Court for the District of Puerto Rico. The Senate passed S. 1724 and similar legislation (S. 565) in the 94th Congress.

In 1975, the Subcommittee on Civil and Constitutional Rights held 3 days of hearings regarding S. 565 and its House counterpart. The 1975 subcommittee hearings did not address the issue of the Federal District Court in Puerto Rico. Instead, they focused solely on the issue of court interpreters in the Federal courts generally. No bill was reported by the subcommittee at that time.

The recent hearings conducted by the subcommittee focused on both issues described above since the legislation before the subcommittee (H.R. 10228) addressed both issues. While convinced by the testimony received that some changes need to be made regarding the pleadings and proceedings of the District Court for Puerto Rico, the subcommittee members were not convinced that the legislation before it adequately solved the problems which exist in that court. Consequently, the subcommittee voted to delete those provisions of the legislation which would have affected the District Court for Puerto Rico. The members did, however, indicate a commitment (through

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[1] July 19, August 2 and 9.

[page 3]

unanimous sponsorship of new legislation) to continue to examine the problem in an attempt to reach some resolution at the earliest possible date in the next session.

RIGHT TO APPOINTMENT OF COURT INTERPRETER

An original impetus for legislation addressing the issue of court interpreters was the 1970 decision of the U.S. Court of Appeals for the Second Circuit in *U.S. ex rel Negron* v. *New York*, 434 F. 2d 386 which held that the sixth amendment to the Constitution requires that non-English speaking defendants be informed of their right to simultaneous interpretation of proceedings at government expense. In recognizing that federal case law on this issue was scant, the Court focused on State court opinions which have recognized such rights. In *Terry* v. *State*, 15 S. 386, 387 (1925), the Court of Appeals of Alabama stated that

> (t)he accused must not only be confronted by the witnesses against him but he must be accorded all necessary means to

> know and understand the testimony given by such witnesses. Mere confrontation of the witnesses would be useless, bordering on the farcical, if the accused could not hear or understand their testimony.

U.S. v. *Carrian*, 488 F. 2d 12 (1973), a case similar to *Negron*, reaffirmed the principle that continuous interpretation should be provided when language barriers are obvious and the defendant is indigent.

There are currently four relevant Federal statutes regarding the appointment of court interpreters. However, the language in these provisions make the appointment of interpreters discretionary, not mandatory:

> Rule 28(b) of the Federal Rules of Criminal Procedure provides that the court "may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter." The Advisory Committee notes to the 1966 amendment of rule 28 describes the scope of the rule as including interpreters not only for the non-English speaking but also for the deaf. The note further states that "general language is used to give discretion to the court to appoint interpreters in all appropriate situations."
>
> The Criminal Justice Act of 1964 [18 U.S.C. 3006A(e)] provides that court-appointed counsel may obtain expert or "other" services "necessary to an adequate defense."
>
> Rule 43(f) of the Federal Rules of Civil Procedure states that "the court may appoint an interpreter of its own selection and may fix his reasonable compensation. The compensation shall be paid out of funds provided by the law or by one or more of the parties as the court may direct and may be taxed ultimately as costs, in the discretion of the court."
>
> Rule 604 of the Federal Rules of Evidence requires that an interpreter be "subject to the provisions of these rules [the Federal Rules of Evidence] relating to qualification as an expert and the administration of an oath or affirmation that he will make a true translation."

[page 4]

Despite the discretionary powers which these statutes have conferred on federal judges, testimony before the Subcommittee indicated that several federal convictions have been reversed on due process grounds where no interpreter had been appointed and where the defendant's knowledge of English was either minimal or nonexistant. (*U.S. ex rel Navarro* v. *Johnson*, 365 F. Supp. 676 [1973]; *In re Muravior*, 192 Cal. App. 2d 604: *Parra* v. *Page* 430 P. 2d 834 [1967].[2] In addition, by testimony and by affidavits submitted to the Subcommittee, we were given examples of recent cases where federal judges were reluctant to use the discretionary powers which they have been granted.[3]

In emphasizing the need for this legislation, Congressman Fred Richmond noted before the subcommittee that "(i)f language-handicapped Americans are not given the constitutionally established access to understand and participate in their own defense, then we have failed to carry out a fundamental premise of fairness and due process for all." As he commented, "with the deaf community, this communication problem has long been overlooked because it is invisible."

COURT INTERPRETERS ACT

P.L. 95-539

NEED TO APPOINT CERTIFIED INTERPRETERS

All of the witnesses who testified before the Subcommittee regarding the issue of court interpreters concurred that one of the key provisions, if not the key provision, of this legislation is the requirement that the Administrative Office of the U.S. Courts initiate a certification procedure for court interpreters in order to insure that only qualified interpreters are used in the federal courts.

The basis for this concurrence was the concern voiced repeatedly that there is currently no method of evaluating the accuracy of interpretations provided in the courts. Mr. Stafford Richie, Special Assistant General Counsel for the Administrative Office of the U.S. Courts, in a colloquy with Congressman Butler, highlighted the problem when he testified that a record of proceeding involving interpreters does not include a statement or record of the interpretation. According to Mr. Richie, "nobody knows how accurate the interpretation may have been except the interpreter. And he is the wrong person to look to for an impartial assessment of his performance."

Ms. Paulette Harary, president of the Court Interpreters Association of New York further attested to the problem in her testimony before the subcommittee.[4] We were told by Ms. Harary, whose primary experience is with the federal district court in New York, that the present system of selecting interpreters often involves the expedient acceptance of individuals based solely on their own representation of competence in a particular foreign language.

What H.R. 14030 requires

H.R. 14030 requires the Director of the Administrative Office of the U.S. Courts to establish a certification process for interpreters used in federal district courts and to maintain on file a list of all such certified interpreters and preference in appointment is to be given, by the presiding judicial officer, to the most available certified interpreter. If

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[2] Testimony of Hon. Fred Richmond, U.S. Representative in Congress from the 14th District of New York on July 19, 1978.

[3] Testimony, with affidavits, of Sy DuBow, Legal Director of the National Center for Law and Deaf (NCLD) and of Gary Hinkley on Aug. 2, 1978.

[4] Testimony by Paulette Harary on August 2.

[page 5]

no such interpreter is reasonably available then an otherwise competent interpreter is to be appointed.

Preference for appointment of a certified interpreter is the mechanism, provided by this legislation, through which the government can guarantee the accuracy of the translation provided. Without this preference, existing problems regarding the quality of interpreters will continue. The following case further illustrates the need for this preference:

In Commonwealth of Virginia v. *Edmonds* (1976) a case cited by Sy DuBow, Legal Director, the National Center for the Law and the Deaf, in testimony before the Subcommittee on August 2, 1978, the lower court appointed a police officer who knew only fingerspelling to interpret for a deaf rape victim. When asked what happened, the woman signed "forced intercourse" and the interpreter told the court she said they "made love." When asked what she was wearing, she signed "blouse" and the interpreter told the court "short blouse."

According to testimony by proponents of this legislation, the appointment of certified interpreters is designed to insure not only an accurate translation but also an impartial one. If a certified interpreter is found to be guilty of misconduct or unethical behavior, his or her certification can be taken away. This latter issue was addressed by Carl Imlay[5] of the Administrative Office of the Courts when he related to the subcommittee the concern of the Chief Judge of the U.S. District in Chicago. The Chief Judge noted that to allow an individual to waive the use of a certified interpreter and then to substitute their own personal interpreter might create an opportunity for a party to use an unscrupulous interpreter. According to the Chief Judge, such a problem would be particularly acute in organized crime cases in the Chicago area. However, as Mr. Imlay correctly observed, section 1827(f)(1) of the bill allows the court to limit waiver of officially certified interpreters to cases of special necessity and in situations where the judge has some assurance that a noncertified interpreter will give an honest rendition of the testimony.

Summary and Description

Section 2(a) of the bill adds two new sections, 1827 and 1828, to title 28 of the United States Code which set forth the circumstances under which certified interpreters are to be provided in federal district courts and the type of interpretation, special or otherwise to be provided.

New section 1827 requires the Director of the Administrative Office of the U.S. Courts to determine, prescribe, and certify qualifications of persons who may serve as certified language interpreters or interpreters for the hearing impaired in federal district courts. The certification process is intended to assure that the interpreters used in the federal courts be of the highest quality. In developing criteria for the selection of qualified interpreters, the Director is to take into consideration criteria such as the education, training and experience of such individuals. The Director must bear in mind that an individual need not only demonstrate a capacity to interpret for an individual who speaks only or primarily a language other than English or for an individual whose hearing is impaired but that that individual should

[page 6]

also be sufficiently familiar with the terminology and procedures of the judicial system so as to ensure accurate interpretations.

It is the committee's belief that the Director must meet with organizations serving individuals who speak a language other than the English language and the hearing impaired in developing criteria for qualified interpreters. Organizations such as the National Association of the Deaf, the National Registry of Interpreters for the Deaf, State registries of interpreters for the deaf and State associations of the deaf could be particularly helpful in defining standards for interpreters for the hearing impaired. For language interpreters, organizations such as state or local associations of language interpreters and the Mexican-American and Puerto Rican Legal Defense and Education Funds could be of assistance in developing standards. The U.S. State Department, foreign language departments within state colleges and universities and foreign language associations could also be of assistance to the Director in fulfilling this task.

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[5] Testimony by Mr. Imlay before the subcommittee on July 19, 1978.

Each district court is to maintain an updated list of all persons who have been certified as interpreters by the Director. The presiding judicial officer must then give preference in appointment to an individual who has been so certified. If no such individual is reasonably available then an otherwise competent interpreter may be appointed. In determining the availability of a certified interpreter the court should consider initially whether an appropriate interpreter is available within its own district. If there is no such interpreter within its own district the court may appoint an interpreter from another district which is in close geographic proximity to the court. It is not the Committee's intent that interpreters be shifted from one district to another, especially if the districts are not in close geographic proximity, except under circumstances where the court finds it necessary to do so to provide for the efficient administration of justice.

The statutory right to appointment of an interpreter under this legislation, is triggered when the presiding judicial officer determines either on the judge's own motion or that of a party that a party or a witness

(1) speaks only or primarily a language other than the English language; or

(2) suffers from a hearing impairment (whether or not also suffering from a speech impairment)

and that either of the above may inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer or that it may inhibit such witness' presentation of testimony. This statutory right applies in any federal civil or criminal proceeding but only when such proceeding is initiated by the United States. It is important to note that the statutory right conferred under this legislation is not intended to supersede other non-conflicting, statutory rights regarding appointment of interpreters. While the judge has the ultimate responsibility in determining whether or not an interpreter is required under this legislation, it is anticipated that counsel will alert the judge's attention to the fact that an interpreter may be needed. It is anticipated that the need for formal proceedings to make an initial determination of whether the appointment of an interpreter is required will be minimal. Instead, we anticipate that during discovery or other pretrial matters counsel for both parties will be able to assess the language capability of a party. Upon agreement

[page 7]

of both attorneys and perhaps brief questioning by the judge of the party, the judge can make the determination regarding appointment of an interpreter.

This legislation does not require that the services of an interpreter be made available for individuals who suffer from a speech impairment which is not accompanied by a hearing impairment. The reason for this omission is the difficulty in determining the type of interpretation services which would be appropriate for such individuals. This omission, however, is not intended to prohibit a court from providing, on its own initiative, assistance, where appropriate, to such individuals if it will aid in efficient administration of justice.

Waiver of the right to an interpreter is permitted under the safeguards spelled out in section 1827(f). The Committee anticipates that waiver of appointment of certified court interpreters will be limited primarily to cases of special necessity and in situations where the judge has some assurance that a non-certified interpreter will give an honest and impartial rendition of the testimony.

If an individual, other than a witness, waives, under section 1827(f)(1), the right to have a certified court interpreter appointed by the court then such individual may utilize the services of a non-certified interpreter of such individual's choice. The bill provides that the fees, expenses, and costs of such interpreter be paid in the manner provided for court appointed interpreters. This provision was included so as to not penalize an individual who, because of special circumstances, could communicate more effectively in the proceedings with a noncertified interpreter of such individual's own choice. The committee anticipates that such interpreter will have expenses and costs paid at the same rate as that of a court appointed interpreter. If such individual is an interpreter by profession (but is not certified by the Director) then such individual's fees should also be paid at the same rate as that of a court appointed interpreter. If, however, such individual is not an interpreter by profession then the committee anticipates that the fees paid will be determined by the Director taking into consideration the wages such individual did forfeit or could have forfeited by assisting a party in the proceedings and other reasonable factors.

It is the committee's intent that any privileged communication which is made through an interpreter remain privileged and that the interpreter cannot be compelled to testify as to such communications.

The bill changes present law pertaining to payment of costs incident to providing the services of an interpreter. Under present law the Government is required to provide and pay for an interpreter's services only in the case of an indigent criminal defendant. This bill requires that the cost of an interpreter's services be paid by the Government in all criminal and civil actions which are initiated by the United States whether or not a defendant or party is indigent.

In such civil actions the costs incident to providing the services of an interpreter shall be apportioned among the parties or taxed as costs unless the court, in its discretion, orders that the costs be paid by the Government. The committee anticipates that in such civil cases, the costs will be borne by the Government only in those cases where the court deems it appropriate to serve the interests of justice.

It is the committee's intent that all interpretations are to be made in the consecutive mode except in those limited situations where the

[page 8]

court determines, and all the parties agree, that the simultaneous or summary mode will aid in the efficient administration of justice. The use of simultaneous interpretation is authorized to deal with two situations: first, in cases where the services of a manual (sign language) interpreter are to be utilized and, second, in multidefendant criminal or civil actions.

The terms used above to describe the method of translation services to be used under this bill may be subject to varying constructions. The committee uses these terms to imply the following: simultaneous translation requires the language interpreter to interpret and to speak contemporaneously with the individual whose communication is being translated. No pauses by the individual are required. An interpreter for the deaf who is translating through the use of sign language would also be doing so contemporaneously with the speaker whose communication is being translated. Again, no pauses by such speaker would be required. Under the consecutive mode, the speaker, whose communication is being translated, must pause to allow the interpreter to convey the testimony given. (The pauses would be at short, agreed upon intervals.) Summary translations allow the interpreter to condense and distill the speech of the speaker. The committee anticipates that the summary mode of translation will be used very sparingly.

Section 1828 of the bill authorizes the establishment of special interpretation services which shall be capable of providing simultaneous interpretation services in multidefendant criminal and civil actions.

Sections 3 through 8 of the bill set forth guidelines for the Director of the Administrative Office of the U.S. courts to implement the interpreters program. These sections also give express, or new, authority to the Director to carry out duties not related to the interpreters program.

Section 3(c) gives the Director the power to authorize the full-time or part-time employment by a district court of certified interpreters where the Director considers it advisable based on the need for interpreters in the particular district. The Committee anticipates that the Director will ensure that such interpreters, who must be certified, will be compensated at a rate which reflects the professionalism of the individuals. The Committee believes that under the present rate of compensation for interpreters employed by the courts it would be difficult to hire and retain the qualified interpreters required under this legislation.

Under this section, the Director is also authorized to accept and utilize voluntary and uncompensated services and to accept, hold, administer, and utilize gifts of personal property for the purpose of aiding or facilitating the work of the judiciary.

Under this provision, all gifts of personal property, including law books, are received by the Director on behalf of the government and not on behalf of any individual. Any such gift becomes the property of the government and the benefit of such gift is to enure to the government.

Section 5(d) authorizes the Director to delegate authority to other officers and employees of the judiciary. This section is not intended to permit a blanket delegation of the Director's duties but instead is intended to permit specific delegation on a case by case basis. Any

[page 9]

delegation must be consistent with the responsibility and accountability which Congress has vested in the Director. In the certification program, which is established under this legislation, there are responsibilities on a day to day basis which are more appropriately handled by field personnel. It is in such instances that delegation of specific responsibilities is envisioned.

Section 9 authorizes appropriations of the sums necessary to carry out the amendments made by this Act. Under section 10, all the provisions of this bill, except section 2, become effective on the date of enactment. The effective date for section 2 is 90 days after the date of enactment.

SECTION-BY-SECTION ANALYSIS

SECTION 2(a)

Section 1827—Interpreters in the Federal District Courts

Subsection (a) requires the Director of the Administrative Office of the U.S. Courts to establish a program to facilitate the use of interpreters in Federal district courts.

Subsection (b) requires the Director to establish a program to certify individuals who may serve as language interpreters or interpreters for the hearing impaired (whether or not also speech impaired) in Federal district courts. In determining qualification standards, the Director shall consider the education, training and experience of persons applying for certification. Additionally, the Director is to maintain a list of all interpreters certified under such program and to prescribe fees for such interpreters' services.

Under subsection (c), each U.S. district court is required to maintain a list of all persons certified as interpreters by the Director of the Administrative Office of the U.S. Courts.

Subsection (d) establishes a statutory right to an interpreter in a U.S. district court for a party in any civil or criminal action initiated by the United States in a U.S. district court (including a petition for a writ of habeas corpus initiated in the name of the U.S. by a relator) or for a witness who may present testimony in such action if the court determines that such party or witness—

(1) speaks only or primarily a language other than the English language; or

(2) suffers from a hearing impairment (whether or not also suffering from a speech impairment)

so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer or so as to inhibit such witness' presentation of testimony.

Additionally, under subsection (d), the presiding judicial officer is to give preference in appointment to the most available certified interpreter. If no such interpreter is reasonably available then an otherwise competent interpreter is to be appointed.

Subsection (e)(1) provides for the dismissal of an interpreter who is unable to communicate effectively.

[page 10]

If the court does not appoint a certified interpreter (under (e)(1) above), then an individual requiring the services of an interpreter may under subsection (e)(2) seek assistance from the clerk of the court or the Director of the Administrative Office of the U.S. Courts, in obtaining the services of a certified interpreter.

Under (f)(1) any individual, other than a witness, who is entitled to appointment of an interpreter pursuant to subsection (d) may waive such interpretation in whole or in part. Such waiver is effective only if made expressly by the individual on the record after opportunity to consult with counsel and after the judge has explained, through a certified or otherwise competent interpreter, the nature and effect of the waiver. Lastly, the judge must approve the waiver.

Subsection (f)(2) provides that an individual who waives the right to have an interpreter appointed may utilize the services of a noncertified interpreter of such individual's choice whose fees, expenses, and costs shall be paid in the manner provided for court appointed interpreters.

Subsection (g)(1) provides that the salaries, fees, expenses and costs relative to providing interpretation services shall be paid by the Director from funds appropriated to the Federal judiciary. However, in a civil action the judge may direct that all or part of such salaries, etc., shall be apportioned between or among the parties or shall be taxed as costs.

Subsections (g) (2) and (3) provide that payment of such salaries, fees, expenses and costs with respect to interpreters for government witnesses shall be paid by the Attorney General from funds appropriated to the Department of Justice except that in a civil action the judge may order such salaries, etc., be taxed as costs.

Subsection (g)(4) makes any moneys collected under subsection (g), as a result of taxation or apportionment of costs, available to reimburse the appropriation originally charged for the interpretation services.

Subsection (h) limits the compensation and expenses of an interpreter which a judge may establish, fix, or approve to the maxima allowable under the Director's schedule of fees prescribed under subsection (b) when the compensation and expenses are payable from funds appropriated to the Federal judiciary.

Subsections (i) and (j) define the terms "presiding judicial officer" and "U.S. district court" as used in this section and section 1828 of this title.

Subsection (k) directs that interpretations shall be made in the consecutive mode except that the judge, with the approval of all interested parties, may authorize a simultaneous or summary interpretation when he or she determines that such interpretation will aid in the efficient administration of justice. After making a comparable determination, the judge may also order that special interpretation services, authorized under section 1828, be provided.

Section 1828—Special Interpretation Services

Subsection (a) requires the Director to establish a program for the provision of special interpretation services in criminal actions and in civil actions initiated by the U.S. The primary capability of the program should be to provide simultaneous interpretation services in multi-defendant criminal and civil actions.

[page 11]

Subsection (b) authorizes the Director, with the approval of the judge, to make any special interpretation services available, upon request, in any action in which such services are not provided under subsection (k) of section 1827. Under such circumstances, the services are to be provided on a reimbursable basis. The Director may require prepayment of the estimated expenses of providing the services by the person requesting them.

Under subsection (c), the expenses incident to providing the special interpretation services, when such services are ordered by the judge, shall be paid by the Director from funds appropriated to the Federal judiciary. However, in civil actions, the judge may order that all or part of the expenses shall be apportioned among the parties or direct that they be taxed as costs. Any moneys so collected may be used to reimburse the appropriations initially charged.

Subsection (d) makes the appropriations to the Director available to provide special interpretation services upon the request of an individual. Any prepayment or other payment made by the requesting party may be used to reimburse the appropriations initially charged. Finally, the judge may apportion the expenses among the parties or tax them as costs in a civil action.

SECTION 3

Subsection (a) amends 28 U.S.C. 3604(a)(10) primarily to insure that the Director has express authority to enter into contracts necessary to carry out the provisions of section 2 of the bill and to provide or make available to each court appropriate equipment for the interpretation of proceedings under section 1828.

Additionally, this subsection gives the Director express (rather than the present implied) authority for purposes other than those related to this act.

Subsection (c) inserts a number of new provisions in section 28 U.S.C. 8604(a) authorizing the Director to establish the certification program and the special interpretation program provided in sections 1827 and 1828 of this bill. Additionally, when the needs of a particular district justify it, the Director may authorize the full-time or part-time employment by a court of certified interpreters and the Director may appoint certified interpreters, on a full-time or part-time basis, when such appointments will result in the economical provision of interpretation services. Lastly, this subsection authorizes the Director to accept and utilize voluntary and uncompensated services, and to accept, hold, administer, and utilize gifts of personal property for the purpose of aiding or facilitating the work of the judiciary. This authority is possessed by most executive agencies but has never been made express for the judicial branch. Consequently, this function is presently carried out under the Director's implied powers. The Director would also be authorized to take advantage of section 3102 of title 5 of the U.S. Code which makes provision for readers for blind employees.

SECTION 4

Subsection (*f*) authorizes the Director to make, promulgate, issue, rescind and amend rules and regulations (including regulations prescribing standards of conduct for Administrative Office employees) as may be necessary to carry out his or her functions, powers, duty and

[page 12]

authority. Presently, rules and regulations are made, etc., by the Director relying on the implied authority of the position. The Director would further be authorized to publish in the Federal Register such rules, regulations, and notices for the judicial branch which he or she determines to be of public interest.

Subsection (g)(1) authorizes the Director to apply the exchange allowance or proceeds of sale from the exchange or sale of personal property in whole or part payment for new personal property acquired, provided the transaction is evidenced in writing. All executive agencies currently have this authority under section 201(c) of the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. § 481(c) 1970). The Director had the same authority before the enactment of the Federal Property and Administrative Services Act of 1949. Its enactment inadvertently repealed the same authority for the Director.

Subsection (g)(2) authorizes the Director to enter into multiyear contracts for public utility services and related terminal equipment. Although most telecommunications for the judicial branch are obtained through the General Services Administration, not all services are. In some outlaying courts, the Director procures such services directly. The authority to enter into multiyear contracts for such services, which is the same as the authority given to the Administrator of General Services in section 201(a)(3) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. § 481(a)(3) (1970), can result in substantial savings to the Government. The authority is extended to related terminal equipment because of decisions of the Comptroller General which require agencies to procure, competitively, telephone terminal equipment.

SECTION 5

The new subsection 602(a) provides that the Director shall appoint and fix the compensation of necessary employees of the Administrative Office in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code. Chapter 51 concerns classification of positions. Subchapter III of chapter 53 concerns the application of the General Schedule to positions in the Administrative Office. This act (sections 5 and 6) conforms the provisions in chapter 41 of title 28, United States Code, concerning employees of the Administrative Office, with the provisions resulting from the codification of title 5 in 1966. Accordingly, subsection (a) makes express reference to chapter 51 and subchapter III of chapter 53 of title 5, which are applicable to the Administrative Office pursuant to 5 U.S.C. §§ 5102(1)(B) and 5331(a).

Subsection (b) authorizes the Director to appoint certified interpreters without regard to the provisions of chapter 51 and subchapter II of chapter 53 of title 5, United States Code. These provisions are not applicable to employees of the Courts of the United States. Should the Director determine to appoint directly interpreters, they will be working in the courts. Accordingly, classification of their positions and determination of their salaries should be accomplished in the same manner as for interpreters employed directly by the courts, i.e., in accordance with the Judicial Salary Plan.

Subsection (c) contains the necessary authority for the Director to obtain the services of experts and consultants as authorized by

[page 13]

section 3109 of title 5, United States Code. The section merely codifies the authority which the Director now has as a result of a regular provision in the judicial appropriations. See e.g., Judiciary Appropriations Act, 1978, Public Law No. 95–86, title IV, 402, 91 Stat. 436.

Subsection (d) vests in the Director all the functions of other officers and employees and of the organizational units of the Administrative Office. It authorizes the Director to delegate authority (except authority to promulgate rules and regulations) to such officers and employees of the judicial branch of government as he or she may designate, with or without power to redelegate.

SECTION 6

Section 6 repeals the second paragraph of section 603 of title 28, United States Code, to conform section 603 with the provisions of title 5, United States Code, as a result of the codification to title 5 in 1966. The provisions for determining salaries now are found in section 602(a), which is amended by section 7 of this bill.

SECTION 7

Section 7 amends 28 U.S.C. §1920 to permit the taxation of the compensation of interpreters, and the salaries, fees, expenses, and costs of special interpretation services under sections 1827 and 1828. Section 7 also makes express reference to the taxation of the compensation of a court appointed expert, as permitted by rule 706 of the Federal Rules of Evidence.

SECTION 8

Section 8 repeals a previous statute authorizing the Director to procure the services of experts and consultants. The provision repealed was superseded by the authorization to the Director in the annual judicial branch appropriation acts. See, e.g., Judiciary Appropriation Act, 1978, Public Law No. 95-86, title IV, §402, 91 Stat. 436. This authority also is codified by section 5 of this bill at 28 U.S.C. §602(c).

SECTION 9

Section 9 authorizes to be appropriated to the federal judicial branch such sums as may be necessary to carry out the amendment made by this act.

SECTION 10

Under subsection (a), all the provisions of the Act, except section 2 shall take effect on the date the act is enacted.

Under subsection (b), section 2 of the act shall take effect 90 days after the date of enactment.

COST

The Committee adopts the cost estimate prepared by the Congressional Budget Office although it believes that the figures provided by the Administrative Office of the United States Court, upon which the CBO estimate is based, are inflated and should be revised downward. It should be noted that the Administrative Office prepared its rough cost estimate without the benefits of the limiting language the Com-

[page 14]

mittee has set forth in this Report. The Committee, therefore, anticipates that the Administrative Office will revise its cost estimates upon enactment of this legislation.

STATEMENTS UNDER CLAUSE 2(*l*)(3) OF RULE XI OF THE RULES OF THE HOUSE OF REPRESENTATIVES

A. Oversight statement.—No oversight findings or recommendations of the Committee on Government Operations were received.

COURT INTERPRETERS ACT

P.L. 95-539

Budget statement.—This bill does not provide any new budget authority.

C. Cost estimate from Congressional Budget Office.—Following is the report to the committee by the Congressional Budget Office pursuant to section 403 of the Budget Act:

Congressional Budget Office,
U.S. Congress,
Washington, D.C., September 28, 1978.

Hon. Peter W. Rodino, Jr.,
Chairman, Committee on the Judiciary,
U.S. House of Representatives,
Rayburn House Office Building,
Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 14030, the Court Interpreters Act.

Should the committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

Alice M. Rivlin, *Director.*

Congressional Budget Office

COST ESTIMATE

September 28, 1978.

1. Bill number: H.R. 14030.
2. Bill title: Court Interpreters Act.
3. Bill status: As ordered reported by the House Committee on the Judiciary, September 26, 1978.
4. Bill purpose: This bill provides for the use of interpreters in the federal courts for a party or witness who either speaks only, or primarily, a language other than English, or who suffers from a hearing or speech impairment. The bill authorizes the Director of the Administrative Office of the United States Courts to establish programs to provide interpretive services, and the bill authorizes the appropriation of such sums as may be necessary to carry out the act.
5. Cost estimate:

Estimated cost: Fiscal year:	*(In millions of dollars)*
1979	1.4
1980	2.1
1981	2.2
1982	2.4
1983	2.5

[page 15]

The costs of this bill fall within budget function 750.

6. Basis of estimate: Based on information supplied by the Administrative Office of the U.S. Courts, it is estimated that it will cost approximately $2.2 million in the first year to implement this bill. This includes costs for salaries and benefits for 40 full-time interpreters, non-recurring costs for electronic recording and transmitting equipment, payment for contractual services provided by private interpreters, supplies, travel, and miscellaneous expenses.

For the purpose of this estimate, it is assumed that funds for fiscal year 1979 will be appropriated about halfway through the fiscal year. Therefore, fiscal year 1979 costs reflect one-half the recurring cost plus all lump sum non-recurring start-up costs. Recurring costs were inflated from fiscal year 1979 based on CBO projections of increases in federal pay and in the cost of services purchased by the government.

7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Thomas Elzey.
10. Estimate approved by:

ROBERT A. SUNSHINE
(For James L. Blum,
Assistant Director for Budget Analysis).

STATEMENT UNDER CLAUSE 2(l)(4), OF RULE XI OF THE RULES OF THE HOUSE OF REPRESENTATIVES CONCERNING ANY INFLATION IMPACT ON PRICES AND COSTS IN THE OPERATION OF THE NATIONAL ECONOMY

The committee concludes that there will be no inflationary impact on prices and costs in the operation of the national economy.

* * * * * * * * *

ANTARCTIC CONSERVATION ACT OF 1978

P.L. 95-541, see page 92 Stat. 2048

House Report (Merchant Marine and Fisheries Committee) No. 95-1031(I), Mar. 31, 1978 [To accompany H.R. 7749]

House Report (Science and Technology Committee) No. 95-1031(II), May 18, 1978 [To accompany H.R. 7749]

Cong. Record Vol. 124 (1978)

DATES OF CONSIDERATION AND PASSAGE

House September 25, October 14, 1978

Senate October 13, 1978

No Senate Report was submitted with this legislation.

HOUSE REPORT NO. 95-1031—PART I

[page 1]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 7749) to implement the Agreed Measures for the Conservation of Antarctic Fauna and Flora of the Antarctic Treaty, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

* * * * * * * * *

EXHIBIT C

AFFIDAVIT OF ROBERT E. HEGGESTAD

I, Robert E. Heggestad, being duly sworn, state that the following facts are true and correct:

1. On Thursday, November 8, 1984, I telephoned the Office of General Counsel for the Administrative Office of United States Courts to discuss the background and scope of the Court Interpreters Act of 1978, 28 U.S.C. §1827, et seq. ("the Act"). I was informed that the expert on the Act was Mr. Jack Leeth ("Mr. Leeth"), an employee of the Court Reporting Services Office of the Administrative Office.

2. I telephoned Mr. Leeth on the same day and asked him several questions concerning the applicability of the Act to Grand Jury proceedings. During this conversation, Mr. Leeth noted that numerous Congressional inquiries had been made to the Administrative Office in response to a letter from Mr. Takeru Kamiyama relating to the mistranslation of Mr. Kamiyama's Grand Jury testimony and the failure of the Director of Administrative Office to certify Japanese interpreters under the Act. Mr. Leeth commented that Mr. Kamiyama's interpreter was not certified and, moreover, was not even a qualified interpreter. Mr. Leeth stated that although it was his opinion that the Act did not apply to Grand Jury proceedings, he believed that due to the importance of Grand Jury proceedings all testimony in a foreign language should be tape recorded.

3. On Friday, November 16, 1984, I again interviewed Mr. Leeth by telephone. I asked Mr. Leeth several follow-up questions pertaining to our earlier conversation and to my conversation during the same week with another employee in his office.

4. I asked Mr. Leeth whether his previous comment that Mr. Mochizuki, Mr. Kamiyama's interpreter, was not only uncertified, but unqualified as well, was based on his reading of recent letters sent by Mr. Kamiyama to United States Congressmen or whether it was based on other information which he had obtained independent of that letter. Mr. Leeth stated that the basis for his understanding was a conversation with Dina Kohn, the Director of Interpreter Services for the United States District Court for the Southern District of New York. He noted that during the trial, when the issue of the adequacy of the interpretation was raised, the Director of Interpreter Services for the Court was given the responsibility of reviewing the tapes to determine the adequacy of the translation. Based on that review, Mr. Leeth was told that it was their conclusion that the interpretation was inadequate. He noted that he had been told that the Court had dismissed some of the perjury allegations in the indictment. He also noted that the translator who was retained to review the original interpretation was a highly qualified graduate of New York University. He pointed out that this translator was significantly more qualified than Mr. Mochizuki.

5. I explained to Mr. Leeth that in a recent conversation with his staff, I had asked whether there was a correlation between the certification of interpreters under the Court Interpreters Act and the certification of interpreters by the State Department for escort level and conference level interpretion. Mr. Leeth pointed out that the State Department does not have a certification program. He stated that the State Department hires interpreters based

on a test, not on a certification. He explained that the Court Interpreters Act, however, required a complete certification.

6. With respect to the different levels of interpretation at the State Department, Mr. Leeth explained that between the two levels, escort and conference, the difference in ability and competency was "miles apart." He explained that the Court Interpreters Act certification test would be most comparable to the conference level test and that the requirements for use of interpreters in the Federal courts were far and above those used for escort level interpreters at the State Department.

7. I asked Mr. Leeth to explain the difference between consecutive interpretation and simultaneous interpretation. I informed Mr. Leeth that I had been told that consecutive translation, to the extent that the interpreter used notes, was characterized by various people I had spoken with as being more accurate than simultaneous interpretation. I noted that to the extent that consecutive interpretation involved a summary, even if in fact it were more accurate, it would not be appropriate for use in a courtroom where the exact words of the witness were important. Mr. Leeth responded that consecutive interpretation, when done properly, should not be a summary. He explained that the notes taken during consecutive interpretation were intended to ensure an interpretation which was as complete and accurate as a simultaneous interpretation. With respect to my statement that I had been informed that simultaneous interpretation was not as accurate as consecutive interpretation, Mr. Leeth explained that when properly done, simultaneous translation should be "a virtual mirror" of what was said by the other person.

8. Mr. Leeth informed me that for both consecutive and simultaneous interpretation, the real issue was the degree of competency. He pointed out that with respect to courtroom proceedings, where attorneys use questioning either to obscure or to clarify issues, every nuance of the testimony being translated and being heard by the court or the jury was critically important. He noted that a correct translation was especially important in view of the fact that the judge and jury needed to hear the exact words of the witness in order to make a judgement on credibility. He explained that because of the importance of interpretation in courtroom proceedings, his office required that interpreters used for courtroom proceedings be certified for both consecutive and simultaneous interpretation.

9. In conclusion, Mr. Leeth pointed out that when an interpreter has been requested for use in court for a language which has not been certified under the Court Interpreters Act, such as German, if a decision is made to obtain an interpreter through the State Department, the employees of the Administrative Office who are responsible for retaining the court interpreter are told specifically not to ask for escort level interpreters, but to ask only for conference level interpreters.

Robert E. Heggestad

Sworn To Before Me
This 7 Day Of
December, 1984

Notary Public

My Commission Expires:
My Commission Expires January 1, 1988

EXHIBIT D

AFFIDAVIT OF ROBERT E. HEGGESTAD

I, Robert E. Heggestad, being duly sworn, state that the following facts are true and correct:

1. On Thursday, October 25, 1984, I interviewed Mr. Manabu Fukuda during two telephone conversations. Mr. Fukuda is an interpreter in the Interpreting Branch of the Language Services Division of the United States Department of State. I informed Mr. Fukuda that I was calling on behalf of Mr. K. Tokito to confirm various facts discussed in their recent conversation and to ask further questions relating to Mr. J. Mochizuki and to the Department's policies concerning the use of escort level interpreters and conference level interpreters.

2. In our conversation, Mr. Fukuda confirmed that John T. Mochizuki was certified by the State Department as an escort level interpreter on November 1, 1977. Mr. Fukuda stated that there are no separate gradations which would show the results of certification tests for interpreters and that such tests were graded on a pass/fail basis. Mr. Fukuda further informed me that Mr. Mochizuki had been available to work for the State Department on a very limited basis and that he, therefore, had no recollection of Mr. Mochizuki's qualifications in terms of the range of capabilities for interpreters certified at the escort level. I asked whether Mr. Mochizuki had subsequently applied to be tested as a conference level interpreter. Mr. Fukuda informed me that Mr. Mochizuki had never applied to the State Department to be certified as a conference level interpreter.

3. I asked Mr. Fukuda several questions pertaining to the difference between the qualifications of interpreters

who are certified for escort level interpretation and those who are certified for conference level interpretation. Mr. Fukuda informed me that although the test for escort level interpreters was not an easy test, the test for conference level interpreters was much more difficult, particularly to the extent that it required an "aptitude" for simultaneous translation. I asked Mr. Fukuda whether an escort level interpreter might be qualified to perform simultaneous translation. He stated that although an escort level interpreter would not "normally" be qualified for conference level work, it was not possible to make such a determination unless that individual was tested. Mr. Fukuda explained that escort level interpretation was used typically as part of cultural exchange programs under the sponsorship of the United States Information Agency. He stated that because an escort level interpreter travels with visiting officials, there was a certain amount of administrative work performed by the interpreter and that interpreting required more substantive interpreting than the tour guide level.

4. I asked Mr. Fukuda to describe the difference between consecutive and simultaneous translation. Mr. Fukuda explained that for consecutive translation, the interpreter takes notes, and then using such notes, repeats the statement in the second language. He explained that these notes are especially important, because the English and Japanese grammar structure are different. Thus, Mr. Fukuda noted that during simultaneous translation, where one is speaking and listening at the same time, if the interpreter does not have the aptitude for simultaneous translation, the translation can become very confused.

5. I asked Mr. Fukuda whether an escort level interpreter would normally be qualified to function effectively

in an American legal proceeding. Mr. Fukuda stated that it might be possible that an escort level interpreter would be qualified for courtroom proceedings. He explained, however, that it would depend on the capabilities of the individual interpreter. Mr. Fukuda stated that the State Department would normally be aware of the level of capability of escort level interpreters which they had used but that he had no recollection of Mr. Mochizuki's qualifications.

6. I asked Mr. Fukuda whether note taking was an important factor to ensure the accuracy of consecutive interpretation. Mr. Fukuda reemphasized that for an escort level interpreter who is using consecutive translation, the taking of notes was one of the key factors in performing an accurate translation. He stated that if an escort level interpreter used consecutive translation in a legal proceeding, failure to take notes would have a very negative impact on the accuracy of the interpretation, and that without notes, or with inadequate notes, it was very likely that important facts would be omitted. Mr. Fukuda stated that the only way to ensure accuracy of the consecutive translation was to take notes at the same time and then to use those notes as the interpreter read back the statement which he had translated. Mr. Fukuda agreed that in order to ensure that consecutive translation was accurate, it was critically important that notes be taken.

7. I asked Mr. Fukuda whether there were differences in the functions performed by conference level interpreters. Mr. Fukuda explained that there were two types of conference level interpreters: (1) consecutive interpretation is used for important negotiations where translation is very deliberate. He acknowledged that the use of consecutive interpretation for conference level interpretation would

indicate that the interpreter demonstrated an exceptionally good ability to translate in important areas such as foreign affairs; (2) simultaneous interpretation is used for seminars where there are many presentation papers, with limited time available to present those papers. With respect to simultaneous interpretation used at the conference level, Mr. Fukuda explained that one conference would normally require three or four interpreters. He explained that this was due to the fact that simultaneous interpretation required a great deal of energy and that simultaneous interpreters therefore tired easily. He stated that for simultaneous translation it would be better to have at least two and in most case three interpreters. Mr. Fukuda stated that for legal and complex technical matters at least two simultaneous translators would be needed for a half day period. Mr. Fukuda noted that for conferences which were very serious, the escort level interpreter would not normally be qualified. He stated that one interpreter could not perform adequately or in a full capacity for lengthy periods and that it was therefore the State Department's policy to use a simultaneous translator only for a half an hour at a time. He explained that simultaneous translation was particularly demanding, especially from Japanese to English and from English to Japanese. He noted that the Romance languages were much easier.

8. In concluding, I asked Mr. Fukuda several questions relating to the use of consecutive reporting. For consecutive interpretation, Mr. Fukuda reemphasized the importance of taking good notes. He acknowledged, however, that the ability to take good notes is not tested in the

certification process for escort level interpreters. I asked whether Mr. Fukuda would expect an escort level interpreter to be familiar with the unique legal terminology used in an American Court System. He stated that it would depend on the individual's experience, and that normally if an interpreter didn't have experience in a special area, i.e. technical or legal, he would spend some time in advance researching the specific area before undertaking the interpretation job. Mr. Fukuda concluded that unless one had personal familiarity with an escort level interpreter, it would be impossible to know whether he would be competent to interpret a courtroom proceeding.

Robert E. Heggestad

Sworn To Before Me
This 7 Day Of
December, 1984

Notary Public

My Commission Expires:

My Commission Expires January 1, 1989

EXHIBIT E

AFFIDAVIT OF ROBERT E. HEGGESTAD

1. On November 26, 1984, I interviewed by telephone, Ms. Dina Kohn ("Ms. Kohn"), the Director of the United States District Court Interpreters Office in New York. This office is part of the Federal Court system. I

explained to Ms. Kohn that I was reviewing several issues in connection with the conviction of Reverend Sun Myung Moon and Mr. Takeru Kamiyama ("Mr. Kamiyama") on behalf of the Unification Church. Specifically, I informed her that I was reviewing the interpretation difficulties which had occurred during Mr. Kamiyama's Grand Jury testimony.

2. Ms. Kohn acknowledged that she was familiar with the problems which surrounded the interpretation of Mr. Kamiyama's testimony. I asked her if she was aware of the fact that the interpreter who had been used during the Grand Jury proceeding, Mr. John T. Mochizuki, was certified to perform escort level interpretation by the State Department. Ms. Kohn stated that escort level interpretation was not comparable to the level of interpretation required in a court proceeding, and that escort level interpretation did not require certification.

3. Ms. Kohn further emphasized that certification was not equivalent to testing which was all that escort level interpretation required. She explained for example, that the State Department did not test interpreters' ability in English nor were there other types of investigation concerning the interpreter's qualifications. Such matters, however, would be addressed in a certification process. Ms. Kohn also pointed out that there was no professional service at the Justice Department to examine the background and qualifications of the interpreter -- a standard practice in her office. Similarly, she noted that the Justice Department did not have any means of independently selecting an interpreter. Ms. Kohn stated that for an important proceeding such as the "Moon" case, she would have handled the selection of an interpreter in a totally different way.

4. Ms. Kohn explained that simultaneous interpretation is normally used in a courtroom to relate English statements to someone who does not speak English. On the other hand, where the courtroom proceeding involves questions and answers, consecutive interpretation is normally used. Thus, after each question, the question is interpreted and after each response, the response is interpreted. Ms. Kohn suggested that escort level interpretation does not require consecutive interpretation and that it would be worthwhile to review the tests administered by the State Department for escort level interpretation. She emphasized that consecutive interpretation must not only be accurate in the foreign language, but also in the English language. Thus, the test for consecutive interpretation ideally should test both the interpreter's ability to interpret the foreign language and to understand the English language. She also emphasized that for courtroom proceedings, it was necessary to have an understanding of the legal terminology used in courts, which an escort level interpreter would not have. She also pointed out that an interpreter used in a courtroom proceeding must have the ability to interpret words and questions with exact accuracy. She explained that courtroom interpretation was very precise and required great skill in reaching the exact meaning of a given question or answer, and that it was thus far much more rigorous than interpretation at the conference level.

5. Finally, Ms. Kohn explained that the Interpreter Services Office worked for the court and that she had been asked by the Judge in Mr. Kamiyama's case to retain an objective independent objective translator. When

I asked Ms. Kohn to describe her background in interpreting, she stated that she had worked for the Interpreter Services Office since 1975 and that she had been the Chief Interpreter since 1980. She explained that she was qualified to perform simultaneous interpretation in Spanish. Again, she explained that an interpreter's ability to comprehend questions would necessarily have an impact on the witnesses' ability to understand the question. Thus, court interpreting required an ability to comprehend English and to express oneself in English -- both of which were extremely important. She also stated that her office would not use an agency to find a court interpreter unless they were in a desperate situation. She explained that if an agency was used, there would not be an opportunity to interview the interpreter.

Robert E. Heggestad

Sworn To Before Me
This 7 Day Of
December, 1984

Notary Public

My Commission Expires:
My Commission Expires January 1, 1989

EXHIBIT F

WILLIAM R. RATCHFORD
Fifth District, Connecticut

Committees:
Appropriations Committee
Subcommittee on Interior
Subcommittee on Transportation
Select Committee on Aging
Subcommittee on Health and Long Term Care
Steering and Policy Committee

Congress of the United States
House of Representatives
Washington, D.C. 20515

Washington Office:
432 Cannon House Office Building
Phone (202) 225-3822

District Offices:
135 Grand Street
Waterbury, Connecticut 06701
(203) 573-1418

8 West Street
Danbury, Connecticut 06810
(203) 748-3333

October 9, 1984

Mr. Takeru Kamiyana
Federal Correctional Institution
Pembroke Station
Danbury, Connecticut 06810

Dear Mr. Kamiyana:

Enclosed is a copy of the letter I received from William E. Foley, Director, Administrative Office Of The United States Courts, in response to my inquiry on your behalf.

Please feel free to contact my office at anytime if you have any questions.

With my best wishes,

Sincerely,

William R. Ratchford

William R. Ratchford
Member of Congress
Fifth District, Connecticut

WRR/rasj
Enclosure

EXHIBIT G

OCT - 9 1984

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

October 3, 1984

Honorable William R. Ratchford
U.S. House of Representatives
432 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Ratchford:

I am responding to your inquiry into the court interpreter program on behalf of Mr. Takeru Kamiyama.

The 1978 Court Interpreters Act (28 U.S.C. §1827) established a formal court interpreter program for criminal and certain civil cases in the United States district courts. Under the program this office certifies qualified interpreters to be appointed for non-English speaking parties and witnesses. Because the development and administration of reliable tests of interpreters' competence is fairly expensive and time-consuming, we have instituted formal, independent certification only in the case of Spanish interpreters. Our experience has been that Spanish interpreters were required in over 38,000 of the 40,000 instances in which interpreters were used last year — about 95 percent.

The statute anticipates that it will not always be practicable to have a "certified" interpreter available and authorizes the use of "otherwise competent interpreters". Since the passage of the Court Interpreters Act, we have worked very hard in assisting the courts in obtaining services from well-qualified interpreters (often the same individuals who work at conferences for the Department of State or international agencies). The attached tables reflect the number of instances, by language, that interpreter services were utilized in the federal courts during the last two years.

Mr. Kamiyama does not suggest any difficulties were encountered with interpreter services in actual court proceedings. Nor, understandably, does he seek relief from any detriment resulting from inadequate services furnished before the grand jury. The subsequent court proceedings should have provided opportunities to resolve any such questions on a particularized basis. Rather, Mr. Kamiyama suggests that the existing provisions of the Court Interpreters Act should be extended to cover ancillary proceedings — such as grand jury sessions. Mr. Kamiyama's proposal is largely a matter of policy for Congress to determine. In light of their extensive role in the grand jury process, you may wish to request the views of the Department of Justice on his proposal.

Sincerely,

William E. Foley

William E. Foley
Director

Enclosures

YEAR ENDED JUNE 30, 1983

As Reported By District Courts		As Reported By District Courts	
Language	Number of Times Used	Language	Number of Times Used
Spanish	30,372	Tagalog	8
Serbo-Croatian	341	Dutch	6
Haitian Creole	327	Czech	4
French	165	Filipino	4
Urdu	155	Hmong	4
Chinese	131	Rumanian	4
Chamorro	75	Indonesian	3
Thai	72	Polish	3
Korean	67	Finnish	2
Armenian	62	Latvian	2
Japanese	61	Swedish	2
Russian	56	Calabrese	1
Navaho	53	Chaldean	1
Italian	47	Guamaynese	1
Sicilian	43	Neapolitan	1
Arabic	40	Persian	1
Greek	37	Pima	1
Portuguese	37	Sioux Lakota	1
German	28	Yiddish	1
Apache	26		
Hebrew	23		
Hindoustani	18	As reported by Bankruptcy Courts	
Sign	18		
Farsi	17	Spanish	34
Vietnamese	17	Sign	3
Hungarian	15	German	1
Punjabi	10	Italian	1
Turkish	10	Russian	1

YEAR ENDED JUNE 30, 1984

As Reported By District Courts	
Language	Number of Times Used
Spanish	38,224
Thai	205
Haitian Creole	161
Arabic	124
Korean	117
Portuguese	116
Mandarin	111
Italian	100
French	87
Armenian	80
German	75
Urdu	75
Navaho	73
Chinese	62
Greek	54
Japanese	40
Punjabi	38
Farsi	36
Hebrew	33
Cantonese	32
Russian	27
Sign (For Deaf)	24
Serbo Croatian	23
Hungarian	22
Vietnamese	20
Filipino	17
Polish	15
Apache	13
Chamorro	13
Tagalog	13
Cuban	11
French Creole	10
Bengali	7
Taiwanese	7
Tamil	7
Yoruba	7
Hindi	6
Tewa	5
Dutch	4
Keres	4
Papago	4
Pushtu	4
Turkish	4
Sicilian	3
Czech	2
Hmong	2
Lebanese	2
Malai	2
Albanian	1
Samoan	1
Swedish	1
Tongan	1

As Reported by Bankruptcy Courts	
Spanish	96
Sign	1

EXHIBIT H

RON PAUL
[illegible], TEXAS

COMMITTEE ON BANKING,
FINANCE, AND [illegible] AFFAIRS

RANKING REPUBLICAN
SUBCOMMITTEE ON CONSUMER AFFAIRS AND
COINAGE

ROOM 1234
LONGWORTH HOUSE OFFICE BUILDING
(202) 225-[illegible]

Congress of the United States
House of Representatives
Washington, D.C. 20515

DISTRICT OFFICES

[illegible], SUITE [illegible]
BELLAIRE, TEXAS 77401
(713) [illegible]

136 OYSTER CREEK DRIVE
LAKE JACKSON, TEXAS 77566
(409) 297-[illegible]

WEEKLY RECORDED MESSAGE:
HOUSTON (713) [illegible]
LAKE JACKSON (409) [illegible]

September 28, 1984

Takeru Kamiyama
Federal Correction Institution
Pembroke Station
Danbury, CT 06810

Dear Takeru:

Thank you for your recent letter explaining your legal situation and concern for proper representation for non-English-speaking defendants tried in the U.S. Court system.

I'm sorry to hear you were misrepresented by the court interpreters on several of your indictments. I have made inquiry into the certification requirements established by the Administrative Office of the U.S. Court. As you know, the only certification test administered is for Spanish interpreters. Approximately 30,000 court appearances involving Spanish come before the Federal courts each year compared to approximately 75 court appearances (2 or 3 actual cases) involving Japanese. The Administrative Office requests the best interpreters from the State Department or possibly even the United Nations; however, it is the prerogative of the U.S. Attorney to assign an interpreter of his/her choosing to present information to the Grand Jury.

This is a very serious situation for the U.S. criminal justice system. I appreciate your bringing this to my attention. While it is not economically feasible to establish certification tests for languages used so infrequently (the approximate cost to merely develop the test--not counting the administering of the same--would be $70 to $75,000. Certainly an alternative could be arranged to guarantee proper protection for non-English and non-Spanish-speaking individuals. Unfortunately, no legislation which would correct this problem has been introduced in Congress.

Again, I thank you for presenting this situation to me. My desire and what should be the U.S. Court's desire is to ensure that all defendants have a fair and accurate trial.

Sincerely,

Ron Paul

Ron Paul
Member of Congress

RP/dd

EXHIBIT I

(COPY OF SIGNED, NOTARIZED EXHIBIT SUBMITTED SEPARATELY FOR RECORD)

AFFIDAVIT

I, Takeru Kamiyama, being duly sworn, state that the following facts are true and correct:

1. On July 9, July 16 and July 21, 1981, I appeared to testify before a Federal Grand Jury in the District Court for the Southern District of New York. I was informed that this Grand Jury was investigating the tax liability of Reverend Sun Myung Moon. Because I was a Japanese citizen who could not speak or understand English, the Government provided an interpreter to translate the Goverment's questions to me into Japanese and my answers to those questions into English. I was not allowed to have either my own interpreter or my own counsel present in the Grand Jury room during my testimony.

2. Each day that I appeared before the Grand Jury, I was questioned by the Government prosecutor, Mr. Martin Flumenbaum. Mr. Flumenbaum questioned me during the full morning and full afternoon on each of the days that I testified. Mr. Flumenbaum's questions, which were asked in English, were translated after each question into Japanese by Mr. John Mochizuki, the government interpreter.

3. During my testimony, Mr. Mochizuki took some fragmentary notations while Mr. Flumenbaum was asking each question. In many instances I observed that Mr. Mochizuki,

who was sitting next to me, did not appear to rely on those notations which he had taken and I could not understand the meaning of the questions which he had asked, as translated into Japanese. Because Mr. Flumenbaum spoke hurriedly and asked questions in rapid succession, Mr. Mochizuki appeared to be rushed and unable to complete his notations for any given question. Thus, in some instances Mr. Mochizuki's translation was so confusing that I had to ask Mr. Mochizuki to repeat the prosecutor's question. Although Mr. Mochizuki translated my answers to Mr. Flumenbaum from Japanese to English, because I could not understand English, I did not know at that time whether my answers had been accurately translated into English.

____
Takeru Kamiyama

Sworn To Before Me This
___ Day Of December, 1984

____
Notary Public

My Commission Expires:

____

EXHIBIT J

A 682

TRANSLATOR'S NOTES

1. THE INTERPRETER'S QUESTIONS WERE NOT ALWAYS ONE GRAMMATICAL SMOOTH SENTENCE. THIS IS PARTLY THE INTERPRETER'S OWN STYLE OR AWKWARDNESS, BUT PARTLY SUCH A STYLE IS ENCOURAGED OR COMMON IN SPOKEN JAPANESE. JAPANESE SENTENCES TYPICALLY STARTS OUT WITH A TOPIC PHRASE, IDENTIFYING THE PRESUPPOSITION OF THE SENTENCE. FOR EXAMPLE, A SENTENCE SUCH AS "AS FOR THE ZOO, THE ELEPHANTS WERE INTERESTING." IS NOT CONSIDERED TO BE A VERY AWKWARD SENTENCE.

2. JAPANESE OFTEN DELETES THE SUBJECT OR THE OBJECT OF A VERB. THIS IS ESPECIALLY TRUE IN SPOKEN JAPANESE. SUCH NOUNS ARE IDENTIFIED ACCORDING TO THE CONTEXT. BUT EVEN THEN THERE ARE MISTAKES THAT ARE MADE DUE TO THE ELIMINATION OF NOUN PHRASES. IN SUCH CASES, IT IS COMMON TO ASK THE SPEAKER TO IDENTIFY THE REFERENT VERBALLY.

3. EVEN IN TECHNICAL PAPERS, THE FLOW OF A DISCOURSE OR A SENTENCE IN JAPANESE, IF FAITHFULLY TRANSLATED, OFTEN WOULD NOT MAKE SENSE IN INDO-EUROPEAN LANGUAGES. CLAUSES NEED NOT BE CONNECTED WITH LOGICAL CONNECTIVES. THEY ARE OFTEN CONNECTED WITH A LOOSE AND AMBIGUOUS "AND", TO GIVE AN OVERALL BACKGROUND OF THE TOPIC IN QUESTION.

4. THE TRANSLATOR FOUND SOME OF THE DEFENDER'S RESPONSES ON THE TAPE TO BE ABNORMALLY RAPID OR REPETITIVE. SOME WERE ILLOGICAL TO THE EXTENT THAT THEY WERE UNGRAMMATICAL AND INCOMPREHENSIBLE EVEN IN JAPANESE. UNDER NORMAL CONVERSATION, THE HEARER WOULD DEFINITELY ASK TO CLARIFY WHAT HE WAS TRYING TO SAY, UNLESS HE FOUND THE SPEAKER'S ATTITUDE MUCH TOO AGGRESSIVE.

5. I HAVE NOTED SOME PECULIARITIES OF THE JAPANESE LANGUAGE AND SPEECH ACTS. THERE ARE MORE. IF YOU HAVE ANY QUESTIONS LET ME KNOW.

MICHIKO KOSAKA

NOTE: Uppermost text is taken from the official transcript of the Grand Jury interpretation and audio tapes of Mr. Kamiyama's testimony. Lower text sets forth Ms. Kosaka's translation.

I:. Ano: chokusetsu kansetsu to-o towazu desu ne, anata wa
ano: Saro:nsu-san ni doiyu: koi i de Tongil no kabu-o
katta ka, kau koto ni nat-chat-taka, so-yu: yo: na
koto-o jiss arui wa sono:yo:setsite koiyu: hu: ni itte kure to
itta koto wa arimasu ka?
K: Nai, arimasen.
I: No, I didn't.

[illegible]
plied he... (??Mr. Saronsu) to say such and such
about how you purchased the stocks of Tong Il or how.
you came to buy the stocks?

K: No, I haven't.

A: Did you ever advise (? Thelony) directly or indirectly that he should
ratify the fact that he was a stockholder?
I: Ano: arui wa chokusetsu kansetsu-o towazu desu ne,
Saro:nsu-san ni kabu no shi no hitori de aru to
yu: koto-o no ano:, oftomeru yo:ni to
so: yu: yo:sei o sita ko to-ga arimasu ka?
K: Arimasen, watakushi-wa.
I: No, I didn't do it.

X: Have you ever, directly or indirectly, ask(Mr. Saronsu
to accept or to suggest that he ratify the fact that h
is one of the stockholders?

K: No, I haven't.

A: Did you ever have any conversation with Joe Tully in which you instructed him...

Break in taping here, then:

K: no: chotto hanasite iidesu ka.

I: Can I go on?

A: Sure.

K- May I say more?

A: Did you ever tell Mike Warder to give a false explanation as to how he paid for his stock in Tong Il?

I: Ano: Mike Warder-ga Tong Il no kabu-o katta sono keii desu ne, sore ni tuite kyogi no mosi tate-o suru yo: Warder ni itta koto wa.

K: Watakusi-wa, arimasen.

I- Have you ever told Mike Warder to make a false declation over how he purchased the Tong Il stocks?

K- As for me, I haven't.

A: Did you ever tell Michael Warder that ... to tell government investigators that he got five thousand dollars to purchase stock in Tong Il from relatives or friends? Did you ever tell him to give that explanation to anyone?

I: Ano: Mike Warder ni desu ne, ei, gosen-doru-o sinseki ya nanika kara, tomodati ya nanika kara moratte, to, sono kane de, ei, kabu-o kau koto ni natta to seifu no samon ya nanika ga haittara desu ne moisitateru, yoni, to no: yu: koto o itta koto-ga arimasu ka.

K: Watasi-wa, arimasen.

I: I didn't do it.

I: To Mike Warder, have you ever told him to declare to the government investigations or to the others that (he) received $5,000 from the relatives, friends, etc., and bought stocks with that money?

K- No, I haven't.

K: Sore de Mike Warder-ga hatigatu ni Mike Warder no namae de gosen doru no kabu-o watasi-ga hakko:-simasita.
hakko:site-age-masita.

I: I had five thousand dollars (?) stock issued for Mike Warder in August.

K- I had $5,000 stock issued on behalf of Mike W.
in August in Mike Warder's name.

A: Did Mr. Warder give you any money?

I: Ano: Warder-san wa anata ni okane-o agemasita ka?

K: Kare-wa, kuremasendesita. Watasi-ga
Katte-agemasita. Nazekato yu:to shatyo:ni natte mora u tame ni.

I: No, he didn't, but I obtained it
and gave it to him
just so I can convince him to be the president.

I- Did Mr. Warder give you the money?

K- He didn't. I bought it for him, because (I w
him to become the president (of the company).

A: Did Reverend Moon ever have any conversations with Mr. Warder about becoming president of Tong Il, to your knowledge?

I: Ano: anata no oboete oreru tokoro de wa desu ne:, Reverend Moon-wa (break)

(Break in taping here. Nothing more recorded on this side (side 1) of cassette.
Also, nothing recorded on side 2 of this tape (tape 1))

I- Well, to your knowledge, Rev. Moon ... (break)

TAPE 2, SIDE A: July 9 pp. 32-35, pp. 43-47

A: How many hours a week would he advise you on Tong Il?

I: Maisyu: sono Tong Il: no Tame ni sensei-ga daitai san-jikan gurai ano:
advise, consulting-o ...

K: Nanjikan to yu: no wa watasi-wa iemasen, ienai desu keredomo. Sikasi adviser
kara consultant, sore mitainaru hataraite site,
ni, watasi-wa kyu:ryo: dasu koto-o kettei-simasita.

I: I can't say for sure how many hours weekly, but for the aforesaid reasons
I decided that he be paid.

I- Every week, for Tong Il, how many hours did he
consult, ...?

K- I cannot say how many hours. But I decided to
the remuneration for the (work) from an advisor
consultant.

A: Then let the record reflect that I'm going to stop the tape recorder right
now and change the tape.

(short break in taping)

A: The witness is still under oath.

I: Se re de saki hodo-no sensei-ga ima demo yuikoi desukara.

I- (I want to remind) you that the previous oath
still valid.

A: Did Reverend Moon advise you on business matters for Tong Il?

I: Tong Il: no kono business to site Moon-sensei wa advice site-kure masita ka?
business ...

K: Motiron desu yo!

I: Yes, of course.

I- Did Rev. Moon advise you on the business matte
Tong Il?

K- Of course.

A: And did he advise you about finances? financial matters?

I: Sorede, sikin-men no koto, kinyu no koto ni tuite-wa doi de syoi ka?

K: Ei, soi yui fui na jitsu mu-teki na tokoro-wa desu ne, sore-wa zenzen
touch-simasen. Zentai-no hoikoisei toka ni ...

I: No, because he didn't lead me towards the overall direction finding,
but not in the nitty-gritty of our financing.

I- And how about the matters of capital, financi. matters?

K- Well, he does not touch such practical busine affairs. (He advised on) overall direction.

A: Well, what kind of business matters did he advise you about?

I: So; suru-to business no koto to yutte mo donna koto desuka? advise-sita-kureta no-wa.

K: Tatoeba, hataraite iru hitotati no atukaikata dato ka, Sore kara kongo no business no ho:ko:sei desune, ma! Zenpan-ni wataru tokorono, ma! consultant desune, watasi ni taisite mata kaisya ni taisite no. Watasi-ga hituyo: nara watasi-ga kiite, sore-ni taisite kotaete kureru to yu: koto desu.

I: As to how to cope with the workers or the employees,
and set up a direction to our future visions,
and again overall matters where he acted as consultant and advisor and
if I were to raise any question he was always willing to answer.

I- So, what kind of business matters did he give you the advice on?

K- For example, how to treat the employees, and the future direction of the business. Well, he was consulting on overall, general matters, for me an the company. If I need to, I can ask him and he answers my questions.

A: How often did you discuss Tong Il with him?

I: Tongil no ken de wa dono kurai, choku-choku, ohanasi-o saremasita ka?

K: Sore-wa, ma!, watakusi-ga sore-nitaisite-no situmon-o sureba sore nari-ni kotaete kure masita. Aru toki-wa kuruma no naka de aru toki-wa office-e ha-non site kuretari ....

I: Whenever I raised question he always tried to answer me,
at the office or while in transit in a car.

I- About Tongil, how much, frequently, did you talk with him?

K- Well, that ... If I ask him questions pertaining such, he would answer accordingly, and, sometimes the car, sometimes he would come to the office.

A: How often?

I: Sore-wa hindo-wa dono gurai desu ka?

K: To yui koto wa jikan-o yui n desuka, soretomo doiyui koto nan desyoka?

I: Kaisu?

K: Kaisu? Sore-wa mei consultant desukara, consultant-wa arutoki ni yutte kureru, sore-wa jikan-de desu ne, jikan-de yui koto wa dokihai desu ne.

I- What is the frequency of such (occasions)?

K- Do you mean the number of hours? or, what do you mean?

I- The number of times.

K- The number of times? Well, that ... He is a consultant ... Consultants say when possible (inconv

A: Did you talk to him every day about Tong Il? once a week? once a month? once a year?

I: Sosuruto tatoeba Tong Il no hon de sensei to no hanasi to yui no wa mainiti toka soot shu ni ikkai gurai atta toka, aruiwa tuki ni ikkai gurai atta toka, nen ni ippen toka so yui ....

K: Watasi-wa tsuzu, tsuzu Rev. Moon ni au kikai-ga arimasu kara dakara ichi-nen ni ichido datoka, ikkagetu ni ichido datoka, soi yui huf na kotojai naidesu ne.

I: When I talk about the chances of my seeing Reverend, it was almost constant. So it's not as infrequent as once a year or once a month. It's more frequent.

I- Then, for instance, the discussions with the Rev. about Tong Il would be every day, once a week, or once a month, once a year ...

K- I always have the oppprtunity to see Rev. Moon, so it cannot be in the order of once a year or once a month.

A: How often did you talk about Tong Il?

I: Sore de dono kurai aiba aiba, often times, Rev. to hanasi?

K: Tatoeba, katudoo no tame no hoo koku-o site masu ne. Sono toki, sono toki ni, Ninjincha no tame ni, doyuu huu na advertising-o sitara Iidesyoka. A, hoo sitara ii yoo gurai no kotodesu.

I: For instance, how it hapnened fo when we are discussing the campaign, suddenly the matter of ginseng tea may be brought about, and Reverend would say the advertisement should be in such a fashion and so forth.

I- So how much, how oftap, often times did you talk to the Rev. ...?

K- For example, I would be reporting for the ... one of the activities. Then (I would ask him, ... to advertise for the ginseng tea. (He would answer) by saying this will work -- in that manner.

A: Did Reverend Moon know he owned stock in Tong Il? that the stock was in his name in Tong Il?

I: Sore de Tong Il ni desu ne sensei no meigi no kabu-ga aru to yuu koto wa sitte oraremasitaka?

K: Sore-wa sitte oru-to-wa omowa-nai-desu ne. Watasi-ga kimete watasi-ga yarimasita kara.

I: I doubt it, because I took it upon myself and did all what I had to do so I don't think he knew it.

I- And did (he) knew that there are stocks in Tong Il in his name?

K- I don't think he knows. I decided on it and I executed them.

A: Did you tell Reverend Moon that you had issued fifty-thousand dollars worth

I: Sore de sono sensei no meigi de go-man-doru sottoi no kabu-ga aru to yuu koto-o ohanasi-o sita koto-wa arimasu ka?

K: ... (not clear)

I: No, I never mentioned it.

I- And have you ever told him that there are stocks worth fifty-thousand dollars in Rev.'s name?

K- ... (not clear)

A: You never discussed it with him?

I: Sore-o hanasi-atta koto wa arimasen ka?

K: Arimasen. Watasi-ga meigi-o karite jibun-de yarimasita kara.

I: No, it was like my simply borrowing his name and I did execute it.

I- Haven't you ever discussed it with (him)?

K- Never. I borrowed his name and did it myself.

A: Did Reverend Moon sign any documents in connection with his ownership of stock?

I: Sore de ano: kabuken no syoyu: kabu no syoyu: to yu: koto ni tuite, ano: sensei-ga sign-sinakya naranakatta, syorui ni, soyu: hu: na koto-wa nakatta desu ka?

K: Arimasen.

I: No, there was no such occasion.

I- And, well, has it ever happened that the Rev., well, had to sign on the documents, that is concerning his ownership of stocks

K- No, there hasn't.

A: And you never talked to him about it?

I: De: tonikaku sono ken wa sensei ni-wa hanasanakatta?

K: Hanasimasen. Jitumuteki na koto wa issai hanasite-imasen..

I: That is correct. And nothing of the specific, day-to-day office works.

I- And you never talked to him about it?

K- I didn't talk about it. I have never talked about practical business matters.

A: Did you ever tell Reverend Moon that you issued stock in his wife's name?

I: Sore kara sensei ni sensei no okusama no meigi de kabu-ga aru to yu: yu: na koto wa ...?

K: Hanasite imasen.

I: No, I didn't.

I- (Did you talk) to the Rev. about the fact that there
are stocks in his wife's name?

K- I have never talked about it.

A: Now, tell the grand jury why you issued stock ... how much stock you issued in Reverend Moon's name.

I: Anata kono dai baisin ni dozo anata no kuti kara, Moon sensei ni ikura no kabu-o hakkou saretaka anata yutte kudasai.

K: 1973 nen, hatigatu, ni kabu, no name-list-o motte, Mr. Soigi-ni watasite kouyou kabu-o hakkou site hosii to watasi-wa tanomi masita.

I: In August 1973 I asked Mr. Soigi to see that the stocks could be issued in such a way as shown in the list.

K: Sono toki ni watasi-wa Rev. Moon to Mrs. Moon no namae no kuwaete arimasita.

I: The list included both Reverend Moon and his wife.

I- Please tell the grand jury, from your own mouth, how
much stock you issued to Rev. Moon.

K- In August 1973, well, the stocks, well, I carried the
name list and handed it over to Mr. Sogi, and asked
him to issue such stocks.

K- At the time, I had added the names of Rev. Moon and
Mrs. Moon.

K: Sosite sono tokoro ni watasi-wa Rev. Moon ni go-man doru, Mrs. Moon-ni ni-man doru-o, 1973 nen no hatigatu ni, Mr. Soigi-o tousite hakkou simasita.

I: Again, the list included, or the list showed, fifty-thousand dollars for Reverend Moon and twenty-thousand dollars for Mrs. Moon and the list was submitted to Mr. Soigi.

K: Sore-ga dono yoo ni natte kita yuu koto-o, ohanasi-sitai to omoi-masu. doo site sono yoo ni natta ka to yuu koto-o ohanasi-sitai-to omoi masu.

I: And I'd like to tell you, tell the grand jury, as to what had happened.

K: Jikan itadakeru desyoo ka?

I: Can I, do I have time?

K- And, I issued them through Mr. Sogi, in August 1973,
50-thousand dollars worth for Rev. Moon, and 20-

K- thousand dollars worth for Mrs. Moon. And I would like to talk about what had happened and why it had happened that way.

K- May I have the time?

A: Sure.

I: Yes, of course.

K: Kankoku kara, ninjin-cha to marble base-o kaimasita.

I: (to defendant) One question, "marble base"?

K: Marble base to yu: nowa isi no kabin desu ne.

I: M-m-m. Marble base ...

K: Marble base.

K- From Korea, (we,I) imported ginseng tea and marble base.

K- Marble base is a stone vase. (Marble vase--translator suspects the confusion is of b/v sounds)

K- Marble base. (Translator: The interpreter still does not understand that it is vase.)

I: From Korea we imported ginseng tea and marble base.

K: E: sore-wa, New York, a:, L/C-ga kumarete, kankoku kara kai-irete yuku desu.

I: The transaction was done under a letter of credit.

K: Sore-wa, dare-ga kai-irete kita yu: to, sono toki mada watakusi-wa America ni, a:, America ni kite-imasen desita.

I: At that time I was not in America, not yet.

K- Well, that ..., New York ..., The transaction involved a letter of credit, and (we) bought from Korea.

K- Speaking of who imported them, at the time, I have not yet arrived in America.

K: Ichiban saisyo Toitsu kyo:kai, Toitsu kyo:kai ja nai, New York kyo:kai, To:itsukyo:kai, New York kyo:kai no sohi nin oya-ga, Phillip Burley, to yu: hito-ga sohi nin motte-masita.

I: At that time Mr. Phillip Belly (correction from background, "Burley, B-u-r-l-e-y"), Mr. Phillip Burley of New York church was in charge.

K: Soko ni Mr. Oiyama-ga, Mr. Oiyama-wa kankoku-nei no chuman-choisan desune, jui-man doru Phillip Burley ni azukete-to omoimasu.

I: And at that time Mr. Oyama, O-y-a-m-a, seems to have deposited, seems to have handed one-hundred thousand dollars to Mr. Burley.

K: Sore de.

K- Well, first, the Unification Church, no not the Unification Church, New York Church, Unification Church, Phillip Burley of New York Church was in charge.

K- Then I think Mr. Oyama -- (As you know) Mr. Oyama is a Korean millionaire -- handed one-hundred thousand to Phillip Burley.

K- And ...

A: Mr. Kamiyama, let me interrupt you.

I: Chotto, Kamiyama-san.

A: Were you in the United States when this happened?

I: Ima no deki-goto desu ne. Sono toki-wa Kamiyama-san America ni mou tuite orare masitaka?

K: Mr. Oiyama-ga Phillip Burley ni okane-o ageta toki-wa watakusi-wa mada America ni wa tuite masendesita.

I: I haven't reached the United States when Oyama gave money to ....

K: Sosite.

I- Just a second, Mr. Kamiyama.

I- Concerning this incident, Mr. Kamiyama, were you in America then?

K- When Mr. Oyama gave Phillip Burley the money, I had not yet arrived in America.

K- And ...

A: When you were in Japan did you know that Oyama gave Burley money?

I: Ano: Nihon ni mada anata orare masita toki no sono toki ni, Oiyama-san ga Burley-san ni okane-o kureta to yu koto-wa kikimasitaka?

K: Watasi-wa kiite masen, sono toki.

I: No, I didn't hear when I was in Japan.

I- Well, when you were still in Japan, did you hear
that Mr. Oyama gave Mr. Burley money?

K- I didn't hear it then.

A: When did you first hear that Oyama, or Mr. Cho as he was known, gave Burley
money? ... the first time that you heard that.

I: Sono koto-o ichiban saisyo ni anata-ga siru koto ni natta no-wa itu
desyo:?

K: America ni watasi-ga kita ato ni, watasi-wa sirimasita.

I: Only after my arriving in the United States.

I- When was the very first time you learned about it?

K- After I came to America, I learned about it.

A: When?

I: Sore-wa itu goro desu ka?

K: E: 1973 nen. '72 nen kara 73 nen no hajime data omoimasu.

I: Around the beginning of 1973.

I- Around when was it?

K- H-m-m, 1973. I believe around from 1972 to the early
part of 1973.

A: Who told you?

I: Sore-o anata-ni tugeta no wa dare desu ka?

K: 1973 E:, sore-wa Mr. Phillip Burley to no hanasiai toka sore kara sono
toji ita Louis Burgess-o toosite, watasi-wa sirimasita.

I: It became my knowledge in my talking with Mr. Burley and also in talking with
a Mr. Burgess.

(break in taping here -- followed by an almost inaudible question from A -- sounds
like, "Why did/didn't you use Mrs. Moon's name?")

I: Ano: Mrs. Moon no meigi-o naze okari-ni nattano desu ka?

I- Who told you about it?

K- 1973, well, for instance, in the talks I had with
Mr. Phillip Burley, and through Louis Burgess who
was there at the time, I learned about it.

I- Well, why did you borrow Mrs. Moon's name?

K: Sore-wa mae hutari-wa watasi-no sonkei suru hito de aru-si, meigi-o kari masita. Naze ka to yuu to, haitta hito juuman-doru-ga kokusai toitu kyookai katudoo no tame to, sikin to site watasi-wa kangaemasita. Sore-o desune, sore-o, Rev. Moon to yuu, Rev. Moon-wa kokusai toitu Kyookai-o daihyoo site iru sono hito da to watasi-wa kangaetano desu ne.

I: As I mentioned, hundred thousand dollars came for the activities of International Unification Church. And Reverend Moon represents, as the most important man, for the church, and plus the fact that I always had revered respect to these two people. That is why I made that decision.

K: Rev. Moon, soko sore-wa. Kokusai Toitu Kyookai no katudoo da to watasi-wa kangaetano desu ne.

I: And in my mind Reverend Moon is linked with the activities of International Church activities.

K- Well, the two are the people I respect, and I borrowed (their or her) names (s). Because I considered the hundred thousand dollars which came in to be the capital or for the purposes of the activities of the International Unification Church. And I considered Rev. Moon to be the sole representative of the International Unification Church.

K- In my mind, I equated Rev. Moon with the activities of the International Unification Church.

A: What happened to the rest of the money? You said there was a hundred-thousand dollars given.

I: Sore de mae juuman-doru-ga anata no te ni haitta, sore de ato okane-wa, nokori-wa doko-e it-chatta no desu ka?

K: Phillip Burley-ga Kyookai katudoo no tame ni tukatta to omou no desu ne.

I: I think Phillip Burley used whatever the balance for the church activities.

K: To doji ni juu niman nan-sen-doru datta to omoimasu, juu niman-doru-ga London ni okurare-masita.

I: And also, sometime later, one-hundred-twenty thousand dollars was transferred to London.

I- Well, so, you obtained the one-hundred-thousand dollars. Then, the money, where did the rest of the money go?

K- I think Phillip Burley use it for church activities.

k- At the same time, I believe 120 thousand-odd dollars, 120 thousand dollars was sent to London.

A: From Tong Il?

I: Sore-wa Tong Il kara desu ka?

K: Ii. Kokusai. Sono toki ni 1973 nen hajime datta to omoimasu.

I: At the beginning of 1973.

K: Kokusai Toitu Kyokai katudoo no tame ni Kooza-ga hituyoo datta no desu.

I: For the activities of International Unification Church, they needed a bank account.

I- Was that from Tong Il?

K- Yes. International. Later, I believe in early 1973.

K- There was a need for an account for the activities of International Unification Church.

K: Rev. Moon no meigi-o karite bank-kooza-o open-simasita.

I: And a new account was opened in Reverend Moon's name.

K: Karita desu ne.

I: Borrowing Reverend Moon's name.

K- A bank account was opened borrowing Rev. Moon's name.

K- Borrowing (Rev. Moon's name).

A: Who opened it; did you open that account?

I: Sono kooza kaisetu-wa, anata-ga?

K: Hai, watasi-ga Rev. Moon ni onegai mosiagete. Meigi-o kasite kure-o onegaisimasita.

I: I made that request myself, to Reverend Moon.

K: Sikasi sore izen ni kokusai Toitu Kyokai Katudoo no tame ni meigi karite to yuukoto wa naibu de kimete imasita kara.

I: But, internally, the idea of opening a new account for the activities of International Unification Church had already been decided, internally.

I- Did you ... open the account?

K- Yes. I requested Rev. Moon. I requested to borrow his name.

K- But then, it was internally (or implicitly) decided earlier that the name would be borrowed for the activities of the International Unification Church.

A: Did you ask Reverend Moon to open a bank account in his name?

I: Sore de sensei no mei gi de kouza-o tsukuru to yuu koto-o hakkiri to sensei ni onegai sita wake desu ka?

K: Toitsu Kyokai katudou no tame no bank-kouza-ga hituyou de aru to.

I: I asked Reverend that for the purposes of International Unification Church activities we need a bank account, and that's how I made the request to him.

I- And did (you) clearly ask the Rev. to open the account in the Rev.'s name?

K- That there is a need to have a bank account for the activities of the Unification Church. For this reason,

A: Did he open the account or did you open the account?

I: Sore-o jissai ni kouza-o tsukuru to yuu tetsuzuki-wa anata desu ka? Sore tomo sensei-ga?

K: Ai, sore-wa mou Rev. Moon-wa, ginkou kouza-o open-suru tame ni kare-no signature-ga hituyou desu kara motiron kare ni soko ni sanka sita ...

I: As his signature was needed, he was present at the time.

I- And as for the process of actually opening the account — is it you? or the Rev.?

K- Oh, that, as for Rev. Moon, in order to open a bank account, his signature is necessary; therefore, of course (I had) him participate there ....

A: You were present?

K: Watasi-wa onegai-mousiageta no desu kedo, bank-kouza-o open-suru toki ni wa watasi-wa soko ni wa imasen desita.

I: As I said, I made a request, but when in the act of somebody opening a bank account, I was not present.

K- Although I was the one who requested him, at the time when the bank account was opened, I was not there.

A: So you weren't there when the bank account was opened, correct?

I: To yuu koto-wa koza aita toki, koza hiraita toki-wa anata-wa inakattano desu ne?

K: Sou desu ne. Sensei-ga, signature, sign-suru toki wa sono ba ni wa tatiai-masen desita.

I: I wasn't present when the signature was affixed by Reverend Moon.

I- In other words, when the account was opened, when (you) opened the account, you weren't (there), is that right?

K- That's correct. When the Rev. signed (the papers) I was not present there.

A: How many bank accounts did you ask Reverend Moon to open?

I: Sono toki wa ikutu koza-o akeru koto-o sensei ni ohanasisimasita ka?

K: Sore wa hitotu desu ne. Chase Manhattan Bank ni hiraku to ...

I: Just one. Chase Manhattan Bank.

I- At the time, how many accounts did you intend to open that you talked to the Rev. about?

K- That was only one. That we would open one in the Chase Manhattan Bank.

A: Did you ask him to open a checking account or a savings account?

I: Sore-wa checking desu ka? saving?

K: Watasi-wa sono koro America ni kita checking account dake ka savings account dake ka sooyuu siwake-wa yoku wakarimasen desita. Tonikaku koza-o hiraku to yuu koto desita.

I: Being a novice in America, right after my arrival here, and I couldn't even tell the distinction between savings and checking accounts, so I just took it as an account.

K: Nazeka to yuu to Nihon ni sou yuu system-ga naidesu kara.

I: And back in Japan the system works slightly different. I was unfamiliar.

I- Was that a checking account? or savings?

K- Around that time I was a recent arrival in America and I did not know that there was a 2-system (banking), such as checking and savings. The point was to open an account.

K- Because there is no system such as this in Japan.

A: Did you keep the books and records of Reverend Moon's accounts?

I: Ano: Moon sensei ni kansuru iro iro na kiroku-wa totte aru no desu ka?
(noise)

K: Ugoku tokoro to tomo ni.

I: Wherever I went, the records went with me.

I- Well, did you keep the records concerning Rev. Moon?
(some noise here)

K- Together with wherever I moved around.

A: Did Reverend Moon carry the checkbook with him?

I: Ano: moon sensei-wa checkbook desu ne, kore-o goissyo ni keitai-site orare-masu ka?

K: Iie. Watasi-ga kanri-site ima-sita kara.

I: He doesn't, because I managed it.

I- As for Rev. Moon, speaking of the checkbook, does he carry it with him?

K- No, because I was in charge of it.

A: You carried the checkbook with you from the very beginning of the account?

I: Sore de ichiban saisyo kooza kaisetu site, saisyo kara Kamiyama-san-ga check book-wa ....

K: Watasi-ga keep-simasita.

I: Yes, I kept it myself, from the beginning.

I- So, since the very first the account was opened. Mr. Kamiyama, you, from the beginning, as for the checkbook ... .

K- I kept it.

A: Did you sign any of the checks for Reverend Moon's account?

I: Sore-de Moon sensei no kooza no check-o desu ne anata-ga sign-nasatta koto wa arimasu ka?

K: Watasi-wa sign-sita koto wa arimasen. Sign-site morai-masita-ga watasi

I: I never signed it myself, although I asked him for signature, and I made a request, but I never signed myself.

I- And have you ever signed the check from Rev. Moon's account?

K- I have never signed it. I asked (him) for signature

A: Reverend Moon signed all the checks?

I: Sore de sensei-ga zenbu check-o sign-site to wake desu ka?

K: Sono toori desu.

I: That is correct.

I- And the Rev. signed all the checks?

K- Indeed.

A: And did Reverend Moon write out the other portions of the checks other than his signature?

I: Sore de Moon sensei-wa desu ne sign no hoka ni no kingaku toka iroiro toko-o gojibun de kakareru koto wa arimasu ka?

K: Nai desu ne. Arimasen

I: No, he didn't do it.

I- And as for Rev. Moon, does he personally write out other portions of the check, for example, the amount, other than the signature?

K- I don't think so. No, he doesn't.

A: You prepared all the checks for him?

I: To: yuu koto-wa desu ne, sensei ni sign-site itadakeru yoo ni zenbu sono hoka no tokoro-wa moo kaite oite sign-o onegaisita to yuu koto desu ka?

K: (unclear)

I: That is correct.

I- In other words, you wrote out everything in other portions so that the Rev. can sign and you asked for his signature.

K- (unclear)

A: Did you personally write the checks?

I: Sore de soo yuu check-wa desu ne Kamiyama-san gojisin-ga, anata-ga prepare-nasai-masita ka?

K: Watasi-wa sono toki, kita toki-wa, eigo-o kiku koto mo kaku koto mo dekimasen desita. Watasi no mawari ni aru soo yuu hitotati ni tano mi negate ....

I: Right after my arrival I wasn't familiar with English, and I had a few other people surrounding me, and these are the people who did the job.

I- And such checks, did you Mr. Kamiyama, personally prepare them?

K- Upon my arrival at that time, my hearing comprehension and my writing ability of English was nil. I (did it) by asking such people around me.

A: Did Reverend Moon ever write any portion of the checks on the Chase Manhattan account other than his signature?

I: Ano: Chase Manhattan no check desu ne, soko ni sensei-ga sassatte sign sore, igai no toko-o itu ka dokka ni kaiiti desu nan-demo kaita to yuu koto wa arimasu ka.

I: I'll repeat my question. No, I know the question, but I will repeat it again.

I- Well speaking of the Chase Manhattan checks, has the Rev. ever write out anything, sometime, somewhere, say the date or anything, other than his signature?

A: He wants it repeated? Please.

I: Ano: sign igai no tokoro-ni desu ne, Moon sensei-ga iro iro jibun de kakikomu to yuu koto-wa?

K: Sign igai ni sensei-wa kaita koto wa arimasen.
Watasi no siru kagiri de wa.

I: He never wrote anything other than his signature, as far as I remember.

I- Well, as for Rev. Moon personally writing out the portions of the checks other than the signature?

K- The Rev. never wrote anything other than the signature. As far as I know.

A: Well, did you carry the checkbook or did he carry the checkbook?

I: Checkbook sono mono-wa anata-ga motte tano desu ka? Sensei-ga motte ta no desu ka?

K: Saki hodo mosiagete yoni, watasi-ga Kanri-site-masita.

I: As I said to you earlier, I carried it. I kept it myself.

I- As for the checkbook itself, did you have it in possession? or did the Rev. have it?

K- As I told you earlier, I was in charge of it.

A: So to your knowledge he never wrote anything but the signature, is that correct?

I: To yu: koto-wa anata no sitte-orareru kagiri de wa Moon sensei-wa sign igai no koto wa no: check ni wa kaita koto wa nai to ...

K: Hai. Watasi no sitte kagiri ni oite wa sign igai ni sita koto wa arimasen.

I: To the best of my knowledge, Reverend never affixed anything other than the signature in the book, in the check.

I- So, to your knowledge Rev. Moon never wrote anything other than his signature.

K- Yes. To the best of my knowledge, he did nothing other than to sign it.

K: So: desu.

I: Kamiyama-san wa kankei nai.

K: Hai.

I: Yes that's right.

K: Sikasi sore-wa kokusai to:itsu kyo:kai-o daihyo: suru Rev. Moon to, watasi-wa kangaemasita kara.

I: But I regarded it as Reverend Moon who represents International Unification Church.

K- Yes, it is.

I You, Mr. Kamiyama has nothing to do with it.

K- Yes.

K- However, that's because I regarded Rev. Moon to be the representative of the International Unification Church.

A: And we're talking about the Chase Manhattan checking account, which was opened solely in his name. Is that clear?

I: Ano: Chase Manhattan ginko: no koza-wa mattaku sensei gomeigi dake no meigi desu ne?

I- Well, the Chase Manhattan bank account, that is solely in the Rev.'s name, is that so?

A: Was there any entity, any organization, for the International Unification Church?

I: Anoo, Kono kokusai toitu Kyokai ni kanren site nanika dantai to yuu no wa ari masita ka?

K: Toitu Kyokai ni kanren site dantai to iu meaute?

I: Ei, anoo, kokusai toitu kyokai dosu ne, International Unification Church, ni kanren-site to yuu ka, kut-tuite masita?

K: Hai. America ni HSAUWC, sorekara New York Church desu ne.

I: I can mention HSA, UWC, and New York Church.

K: Kore-wa bekko desu kere domo.

I- Well, was there any organization connected with this International Unification Church?

K- (What do you mean by) organizations connected with the Unification Church?

I- Well, what shall we say, a branch or an attachment to the International Unification Church (in Japanese), International Unification Church (in English).

K- Yes. In America, there is HSAUWC, and the NY Church.

K- This is a separate entity.

A: Why was it the money put in accounts in those names, with Reverend Moon being the signator?

I: Sore de mai sensei-ga sign-sareru no desu keredomo, doosite kono HSA dato ka New York Church no hoo o, no account koza ni naranakatta no desu ka?

K: Anoo chotto, restroom o itte ii desyoka.
Kore ato de kotae-masu kara.

I: Can I go to the rest room?

A: We're going to break for lunch in a couple of minutes, and then you can.

I- Well, speaking of the Rev. signing, why didn't it become the account, account (in Japanese) for, say, HSA or the NY Church.

K- May I go to the restroom? I will answer this later.

I: Sore de ima no gositu mon-wa.

I: I'll repeat the question.

A: Please.

I: Sono NSA toka NY Church no heimo meigi ni nasa nasara nakatta no?

K: Ee, kore-wa America kokunai ni oite no katudoo desu ne. NY Church ni oite mo soo desu ne.

I: This is for the US domestic activities, NSA. The same holds true with the New York Church.

I- And the question?

I- Why didn't you use the name of the NSA or the NY Church?

K- Well, this is a US domestic activity. It is also true with the NY Church.

K: Ee, 1972 nen ni, gutai teki ni kokusai Toitu Kyokai no katudoo-o suru to yuu koto-ga kettei sare te ita no desu ne.

I: And the new decision came in 1972 about International Unification Church.

K: Desu kara kokusai Toitu Kyokai katudo no tame no ginkookooza-ga hituyoo deshita.

I: Which meant that a new, separate account was needed for International Unification Church activities.

K- Well, in 1972, a decision was made to give a concrete form to the activities of the International Unification Church.

K- Therefore, there was a need for a bank account for the purposes of the activities of the International Unification Church.

TAPE 2, SIDE B. JULY 16, pp. 31-36. JULY 16, AFTERNOON.

A: (first part of what was said is cut off on tape) ... point two million dollars in cash from Mr. Shimba didn't you.

I: Sore kara Shimba-san kara no 120-man-doru to yuu no ga arimashita desu ne.

K: Hai.

I: Yes.

I- And there was that 1.2 million dollars from (Mr.) Shimba?

A: Why didn't you use any of that money for Mr. Park?

I: Sore wo Park-san (?) no sono mokuteki ni tukae-masita ne?

(Note: translator not sure of the name referred to here.)

K: Tukaet to omoeba. Hai, sorehomo sironai desu ne. Sikasi sore-wa, sore-wa desu ne kot-chi no katudoshi no tame ni watasi-wa tukai masita kara, soko kara dasu towa omoimasen desita.

K: Dasoito omowanakatta to omoimasuyo, sono toki-wa.

I: We regarded as the funds for the campaigning in this country, and probably that's how I made up my mind otherwise.

I- You could have used it for Mr. Park's purposes.

K- (I,we) could have. That is true. (I,we) could have. But, that, I used it for our activities, so I never thought to pay from that.

K- I think I didn't think to pay, at the time.

A: Who decided when to deposit money into the Chase Manhattan bank account in Reverend Moon's name?

I: Moon sensei no koza de desu ne, dare-ga itu koza ni yokin-suru toka ne, kyo siyo toka, ko iu koto-o kimeru no wa donata-ga itumo kettei-suru no desu ka?

K: (unclear)

I: I do.

I- As for the Rev.'s account, who habitually decides such matters as, who deposits the money, should we do it today?

K- (unclear)

A: And did you go to the bank and deposit any of the money yourself?

I: Sorede anata gojisin-ga ginko-e itte yokin suru toka, wasa wasa itte, surutoka, soi yu koto-wa arimasu ka?

K: Yoku oboete imasen. Watasi itido itta koto oboete imasu.

I: I remember having gone there just once.

K: Ato wa minna makasimasita.

I: On all other occasions I had somebody else do it for me.

I- And did it ever happen that you personally went to the bank to deposit, to take the trouble to go to the bank?

K- I don't remember well, I remember going there once.

K- I delegated the work to the others on other occasions.

A: How much money did you bring to deposit in the bank yourself?

I: Anata gojisin de itta to yuu no wa ikura gurai dattaka kioku oboete imasu ka?

K: Oboete inai desu ne.

I: I don't remember the amount.

I- When you went there personally, do you remember the amount, how much it was?

K- I don't remember.

A: More than a hundred thousand dollars.

I: Anoo, sore juman-doru ijoo gurai desita ka?

K: Watasi, oboete imasen.

I: No, I don't remember.

A: You don't remember?

I: No.

I- Well, was it approximately more than one hundred thousand dollars?

K- I don't remember.

A: Who else deposited money into Reverend Moon's account.

I: Anoo, anata no jisin de hoka no hito-ga desu ne, ano ginkoo e soo yuu koto-o sini iku to yuu no wa, dare-ga kooyuu ni okane-o ireru no (desu ka)?

K: Daibu Onuki ni tanonda koto-ga arimasu.

K: Mr. Ojnuki, daihan.

I: Mr. Onuki, O-n-u-k-i.

I- Speaking of other people going to the bank for such purposes, who deposits the money into the account?

K- There was a time when I asked Daikan frequently.
K-Mr. Daikan Onuki.

A: D-a-i-k-a-n O-h-n-u-k-i, Daikan Ohnuki.

A: Anyone else?

I: Sono hoka arimasu ka?

K: Hakkiri oboete masen. Ei, Matuzaki ni tanonda koto-ga aru kamo siremasen. Demo hakkiri wakarimasen.

I: Perhaps I could have asked Matuzaki, M-a-t-s-u-z-a-k-i.

I- Were there anyone else?
K- I don't remember clearly. There might have been occasions when I asked Matsuzaki. But I don't remember clearly.

A: Did Reverend Moon ever deposit any money into that Chase account?

I: Ano: Moon sensei gojisin-ga itte deposit-suru to yuu koto-wa arimasu ka?

K: Kare hitori de iku wake naijanai desu ka ne.

I: It's impossible -- he goes there alone...It's impossible that he goes there alone.

I- Well, is there a possibility that Rev. Moon personally goes to deposit.
K- Don't you think it's inappropriate (or impossible) that he goes there alone. With someone else.

A: Well, could he have gone there with someone else?

I: Dare ka to issyo ni iku to yuu koto wa arimasu ka?

K: Deposit no tame ni itta koto-wa, watasi-wa oboetemasen.

I: I don't remember him going there for the purpose of deposit.

K: Sore-wa ginkokouza-o open-sita toki-wa Daikan to itta kamosire-naidesu.

I: But most likely for the opening of a new account he must have gone there with somebody.

K- Is it possible that he goes there with someone else?

K- That he went there for the purposes of a deposit, I don't remember that.

K- Well, it is possible that he went there with Daikan at the time of opening the bank account.

K: Sikasi sono noti wa kore-wa itta koto-ga naidesu. Sore-wa, watasi-wa hakkiri ieru koto desu..

I: I can assure you that after opening the account I don't think he has ever gone back there, because I never made such a request.

K: Watasi-wa daitai tanoma nai desu kara.

I: Because I never made such a request.

K: Sonna siturei na koto-wa tanoma nai desu yo.

I: It'll be insolent for me to ask of him.

K- But after that, he has never gone there. I can vouch for that.

K- Because, I never ask him.

K- I would never ask him for such an insulting request.

A: Now, Mr. Ohnuki was Reverend Moon's chauffeur, was he not?

I: Ano: Oonuki-San-wa Moon sensei no chauffeur desu ka? untensyu-san desu ka?

K: Unten sita koto arimasu.

I: He did act as a chauffeur.

I- Well, is Mr. Oonuki Rev. Moon's chauffeur (in English)? ... his chauffeur (in Japanese)?

K- He has driven (the car).

A: Did he also work for you?

I: Ano: Oonuki-san anata no tame ni mo nanika no help-o...?

K: Ai, kono kuni ni kara-wa watasi yorimo motto isen ni kitemasu kara kono kuni no koto kara wa watasi yori mo yoku sitte irukara watasi-wa ginkou ni irete kureru okane motte-itte irete kureru koto negatta desu.

I: He has been familiar with things in America, and so I asked him to ...

K: Deposit no tame ni ....

I: go to the bank for depositing, etc.

I- Well, did Mr. Gauki, also (give) you some help?

[illegible]

K- Well, I requested him frequently to take the money to the bank for deposit, since he knows this country better than I do, having arrived in this country much earlier than I did.

K- For the purposes of deposit.

A: Did you, or someone under your control, keep records of the money going in and out of that bank account?

I: Sore de ima hanasite iru kotsa desu ne. Kono kotsa kara no dasi-ire, kono kiroku to yut no wa donata-ga yatte-iru no desyou ka?

K: Sore wa watasi no mawari ni atta hito da to omoimasu.

I: Some staff around me is charged ...,

I- And this account that you are talking about now, who keeps the records of the money going in and out of the account?

K- Oh, I think the people around me (did it).

K: Ito no kawatte iru kara, watasi-wa sono seikaku na dehairi no kiroku-wa, watasi-wa, tukete-imasen.

I: but they change hands, and I don't make a point of keeping track of in or out.

K: 73 nen, 74 nen, watasi-wa kono kuni ni kite amari kono kuni no system-ga wakarimasen desita.

I: plus the fact that I was not familiar with the system here in America back in '73 and '74 and so forth.

K- They change constantly. And I do not keep proper records of people coming and going.

K- In 1973, 1974. I was a new arrival in this country then, and was not familiar with the system in this country.

A: What was the largest deposit, single deposit, that was made into Reverend Moon's account?

I: Anoo, Moon sensei no kooza ni tumitateta kingaku desu ne, ichiban ookina kingaku to yuu no wa ikura datta desyoo ka?

PAGE 21

K: 40-man-doru gurai datta to omoimasu. Hakkiri hasuu-wa oboete-masen.

I: I think it was around four hundred thousand dollars.

I- Speaking of the amount of money saved (accumulated) in Rev. Moon's account, how much was the largest

PAGE 22

K- I think it was about four hundred thousand dollars. I don't remember the precise lower figures of that amount.

A: Who deposited that money?

I: Sore-wa donata-ga deposit sita no desu ka?

K: Dare ni tanon daka watasi no kioku ni nai desu ne.

I: I don't remember who I asked to do so.

K: Watasi-ga ikanai to yuu koto wa jijitu desu.

I: One thing is for sure -- I didn't do it myself.

I- Who deposited that?

K- I don't have a recollection whom I asked.

K- It's a fact that I didn't go.

A: And where did you get the money -- that four hundred thousand -- to deposit?

I: Sono 40-man-doru desu ne, Sore-wa syussyo-wa doko datta desu ka?

K: Family Fund desu.

I: From a Family Fund.

I- This four hundred thousand dollars, where did it come from?

K- From the Family Fund.

A: Where was the money actually at that time, before you deposited it in these accounts?

I: Sore-wa Family Fund desu-ga, jissai ni sore-wa doko ni arimasita ka? sono 40-man-doru, tumitateru mae ni wa?

K: Watasi-ga chokusetu sono okane kanri sita wake dewa naidesu kara, watasi-wa tanonde kimasita kara.

I: I wasn't physically in charge for that fund.

I- Well, (you say) it's the Family Fund, but where was it actually? That four hundred thousand dollars, right before you saved (in the bank)!

K- Since I did not directly manage that money, since I asked (someone else) ...

K: Torii Tomoko datta to omoimasu, sono kore wa, desu ne, hakki-wa ...., Torii Tomoko datta to omoimasu.

I: But I may have asked Miss Tomoko Torii, T-o-m-o-k-o T-o-r-i-i, but without a clear recollection.

K- I think it was Tomoko Torii, around that time, that is. I am not clear ... but I think it was Tomoko Torii.

A: How did you get the four hundred thousand dollars that was deposited in Reverend Moon's account?

I: Sore de kono 40-man-doru wa desu ne, kekkyoku dedokoro wa doko kara kitamono desu ka?

K: Nihon no kyodai-ga desu ne, Nihon no member-ga desu ne, America ni oitte kimasita. Sono hitotati-ga kita okane-o zutto atumete sore-ga koza ni hairi-masita.

I: Over the years our brethren from Japan who came to the USA, they contribute, and it was accumulated.

K: 700-mei gurai-ga kita koto-o watasi-wa oboete imasu.

I: I remember that there are at least about 700 brethren coming to the USA.

I- And this four hundred thousand dollars, where did it come from ultimately.

K- Many Japanese brethren, the Japanese members came to America. The money that these people came (NOTE: the relation between the money and the people coming is not clear) was collected for some time and that went into the account.

K- I recall about 700 members coming here.

A: Was any money in the Family Fund ever used to pay expenses for the Japanese members who had come to America?

I: Sore kara, Family fund kara desu.ne, sono Nihon kara no kyodaitati ga tokai-site kuru, zaibei-suru tame no keihi ni tukatta koto wa arimasu ka?

K: Tobei-suru tame? Kotchi-e kuru tame?

I: Hai, kotchi-e kuru tame no Koukuuhikooki datoka, Taizai toka, kono Family Fund no okane-o expense tosite tukatta koto wa arimasuka?

K: (unclear)

I: No, we never did that.

I- And, did you ever use the money from the Family Fund for the purposes of the trips to the U.S. of these Japanese brethren?

A 705

K- For coming to the U.S.? To come here?

I- Yes. Have you ever used the money from the Family Fund as expenses for instance, for the air fare, living expense while in the U.S., etc.

K- (unclear)

A: Now, why didn't you put this money in a bank account?

I: Kore-o, kono okane-o naze ginkoo no koza ni ire ni natta no desuka? Kono Family Fund.

K: Aru bubun-wa iremasita. Arububun-wa Kyokai-ga keep-simasita.

I: Part of it was put into the bank and the balance was kept.

I- Why did you put this, this money, into the bank account? This Family Fund.

K- A portion of it was put (into the account). And a portion was kept by the Church.

A: Did you have a bank account in the name of the Family Fund?

PAGE 24.

I: Family Fund to yuu meigi de ginkoo koza motimasita ka?

K: Motimasen.

I: No.

PAGE 24.

I- Did you have a bank account in the name of the Family Fund?

K- No.

A: Why did you use Reverend Moon's name for the Family Fund?

I: Sositemasuto Family Fund no tame ni naze Moon sensei no meigi-o karitano desuka?

K: Sore-wa desu ne. Gaikoku kara kita kane-o, kokusai Toitu Kyokai-o daihyoo-suru Rev. Moon meigi no koza ni ireta riyuu-wa, gaikoku kara kita gaikoku no kyoodaitati-ga kita toki ni soko ni itibu-wa iremasita. Itibu-wa keihi ni hituyoona kinkyuu mondai-ga okoreba soko kara dasutoyuu koto-ga, genkin de, watasi-wa keep-sasemasita.

I: As the money came from overseas, and part of that money may become necessary as expenses to take care of the brethren (fault in tape here, word not clear) we put it into Reverend Moon's name, who legitimately represents International Unification Church.

I- Well, then, why did you borrow Rev. Moon's name for the Family Fund?

K- Well, that, the reason why (I,we) put the money from overseas into the account in the name of Rev. Moon who represents the International Unification Church, is because when our foreign brethren came from overseas, (I,we) deposited a portion of the money into it. I had them keep a portion as contributions from which it was paid as expenses in case an emergency occurred.

A: Didn't you testify last week that the reason you opened the account in Reverend Moon's name was because of the money that Mr. Ishii had sent -- the one point two million dollars?

I: Moon sensei no meigi-o tukatte riyu: to yu: no wa sensyu: no hanasi no naka de Ishii-san kara okurarete kita okane, dakara Moon sensei no meigi-o tukatta to yu:hanasi wa nakatta desu ka?

K: Sirimasen, sou yu: koto-wa.

So: yu: koto wa sita oboe-wa nai desu.

I: I haven't done anything like that, and I don't remember.

I- In the discussion last week the reason why you used Rev. Moon's name was because of the money sent to you from Mr. Ishii? Wasn't there a talk that that's why you used Rev. Moon's name?

K- I don't know such a thing. I don't remember doing such a thing.

A: Well, didn't you testify that it was decided in March if 1972 to open a bank account in Reverend Moon's name and then subsequently Mr. Shimba brought one point two million dollars, ah, one point eight million dollars with him from Japan to the United States, and that that money was going to be used for the international movement?

I: Zenkai no hanasi de desu ne, 72-nen no sangatu goro, Shimba-san kara no 180-man-doru-o Nihon kara motte kite, sosite kokusai Toitu Kyokai no katuyaku no tame ni Moon sensei no meigi de sore-o deposit-sita to sou yu: hanasi wa nakatta desu ka?

K: Watasi-wa siranaidesu.

I: I didn't tell you anything like that.

I-In the previous discussion, wasn't there a story that around March 1972, you brought from Japan 1.8 million dollars from Mr. Shimbo, and that you deposited it in the name of Rev. Moon for the activities of the International Unification Church?

K-I didn't do it. (Note: it may mean: I didn't say it, or I didn't do the act of bringing and depositing.)

A: Well, do you know that to be true, or not true?

I: Sou yuu jijitu-wa arimasita ka?

K: Watasi-wa sirimasen. Watasi-wa ... 1973 nen no sangatu desu. Watasi-ga kita no wa 1972 nen no juuitigatu desu.

I: I don't know, because I came to the USA in November '72.

I-Was there such a fact?

K-I don't know. As for me ... It was March 1973. I came here in November 1972.

A: Were you told that there was a meeting in March of 1972 in which it was agreed that a bank account would be opened in Reverend Moon's name? Were you told that?

I: Anoo, 72 nen no sangatu goro ni desu ne, Kanbu no aida de kaigi-ga atte, Moon sensei no meigi de ginkoo koza-o akeyoo to yuu hanasi-wa anata-wa mimi-ni sita oboemasen ka?

K: 1973 nen... Nihon de sore-wa kikimasita.

I: I heard it in Japan.

(short gap in tape here)

I-Well, around March 1972, did you hear that there was a meeting among the executives and that a bank accoun account was to be opened in Rev. Moon's name?

K-1973 .... I heard of it in Japan.

A: You said you borrowed money from Mr. Torii. You paid back the church, is that right? (not sure of 2nd sentence -- sound not completely clear)

I: Anoo Torii-san kara okane-o itadaite, anatano desu ne, Nihon-en-o uketotte, sore-o Kyookai e site (unclear) Kyookai e kaesita no desu ne?

K: Sono Toori desu.

I: That's right.

that is you.
I- Well (you) received the money from Mr. Torii, in
you (unclear), you
Japanese currency, and you returned it to the Church,
is that so?

K: That is so.

A: And you received that money in the United States?

I: Sore de tsuihoku genka-wa Amerika de uketotta no desu ne?

K: Hai. Sono Toori desu.

I: Right.

I- Well, at any rate, you received the money in America

K- Yes, that is so.

A: Was that money from the Family Fund you used for that?(last 4 words not clear)

I: Dewa sore wa Family Fund kara de wa nai no desu ka?

K: Hai. Nai desu.

I: No, it's not from Family Fund.

I- But isn't that from the Family Fund.

K- No, it's not.

A: Mr. Torii was a missionary with the Church, correct?

I: Torii-san-wa iwaba missionary to yuude tadashii desu ne?

K: (unclear)

I: That's correct.

I- It is accurate to call Mr. Torii a missionary,
correct?

K- (unclear)

A: Where did he get the three (preceding word not clear) thousand dollars to give you?

I: Sore de sono missionary de aru kara-ga 3-man-doru mono okane wa doko kara te ni iretano desu ka?

K: Watasi-wa sirimasen to kotaetanodesu ne.

I: I already answered you, sir, that I have no knowledge.

I- And where did he get such 30 thousand dollars, being
a missionary?

K- I answered that I did not know.

A: Wasn't that money that he got fund raising? Wasn't that money that he solicited fund raising while he was living in the United States?

I: Sore-wa zaibeichuu ni shikin-atume, seiyui koto de toni irete okane de wa nai no desu ka?

K: Doiyatte Nihon-en-ga United States de oroseru no desu ka?

I: How could anybody raise Japanese currency in the U.S. territory?

I- Isn't it the money he got while in the U.S. as part of fund-raising?

K- How can you obtain Japanese currency in the U.S.?

A: How did he get the Japanese currency?

I: Sono sono sono Nihonyen-wa doi yatte atumeta no de syou ka?

K: Watasi-wa sirenai desu. Kare ni kiitara iija naidesu ka?

I: I don't know, and of course you can direct your question to him.

I- And how did he collect the Japanese currency?

K- I don't know. Why don't you ask him.

A: Where does Mr. Torii live?

I: Ima Torii-san-wa doko-ni sunde imasu ka?

K: Nihon ni sunde imasu.

I: He lives in Japan.

A: What city?

I: Doko desyou? shi-wa?

K: Tokyo desyou.

I: In Tokyo, most likely.

I- Where does Mr. Torii live now?

K- He lives in Japan.

I- Where? the city?

K- I think in Tokyo.

A: (unclear)

A: In January 1974 you bought a hundred thousand dollars worth of stock in Tong Il, correct?

I: 74 nen no itigatu ni desu ne, 10-man-doru no Tong Il no kabu-o anata-wa Okaini narimasita ka?

K: Hai.

I: Yes

I- In January 1974, did you buy a hundred thousand dollars worth of Tong Il stock?

K- Yes.

A: And you got that hundred thousand dollars from the Family Fund.

I: Soshite sono 10-man-doru-wa Family Fund kara nyukin-sare-mashita desu ne?

I: Correct.

I- And you got that 100 thousand dollars from the Family Fund.

K- That is correct

A: Did you tell Reverend Moon that you were buying additional stock in Tong Il at that time?

I: Soshite sono koro ato moto yobun ni desu ne, kabu-o kaitai to yui koto o motte orareru to Moon sensei ni hanasare mashita ka?

K: Hanashimasen.

I: No, I didn't.

I- And, around that time, did you tell Rev. Moon that you had intentions of purchasing additional stocks?

K- I did not tell him.

A: Did you discuss with him the reason why you were buying stock in Tong Il?

I: Aa: Tong Il-sha no kabu-o no kau riyuu-o sensei to nanika hanashita koto wa...?

K: Watakushi-wa sou yui koto wa soudan shinai desu ne.

I: I don't dare consult with him on such matters.

I- Have you ever talked to the Rev. about the reasons for purchasing Tong Il company stock?

K- I don't consult with him on such matters.

A: Did you ask him if it was proper for you to own more stock in Tong Il than Reverend Moon?

I: Moon sensei no kabu no shara no ritsu yori no motto oiku anata-ga motu, sensei yori no oiku kabu-o motu to yui koto ni tuite, sono yohi nanika ni tuite sensei to hanashi-o sita koto-ga arimasu ka?

K: Arimasen.

I: No, I didn't talk with him about it.

I- Have you ever talked with the Rev. about your owning higher percentage of the share of stock than him? concerning your owning more stocks than him.

A: Did you have any conversations with anyone as to whether or not it was proper for you to own more shares of stock in Tong Il than Reverend Moon?

I: Aa: Tong Il no kabu-o desu ne, sensei yori no anata no hou no kabusuu-o oiku motte yuite yui koto wa fusawashii ka, douka to yui koto-o dare ka to hanashi-o sita koto ga arimasu ka.

K: Sore-wa kangaetemo minai desu ne.

I: I didn't even think about it, that's it. (last 2 words not clear)

I- Have you ever talked to someone whether it is
proper for you to own more shares of stock
than the Rev.?

K- I wouldn't even consider it.

A: Did you have any kind of conversation like that with Joe Tully(not sure of name).

I: Ano:, Joe Tully (?)-san to so: yu: hanasi-o sita koto-ga arimasu ka?

K: So: yu: koto-wa Joe Tully to hanasita koto wa nai desu.

I: No, not at all with Joe Tully.

I- Well, did you ever have such a conversation with
Joe Tully?

K- I never spoke to Joe Tully about such matters.

A: Did you have any such conversation with Louis Burgess?

I: Louis Burgess-san to so: yu: hanasi-wa arimasu ka?

K: Kamo sirenai desu kedo, watasi-wa oboete nai desu.

I: Might have been, but I don't remember.

I- Is there any such conversation with Louis Burgess?

K- Possible, but I don't recall.

A: So you did think about whether it was ... so it's possible that you did have conversation as to whether you should own more stock than Reverend Moon.

I: To yu: koto-wa desu ne sensei yori mo anata no ho: ga kabu-o ooku motu to yu: koto-o chotto kangaeta koto-wa aru to yu: koto mo arimasen ka?

K: (not clear)

I: I didn't give thought to that.

I- Then, wouldn't it be that you did think a little
about your owning more stock than the Rev.?

K- (not clear)

A: Did you ever talk to Reverend Mopn about this at all?

I: Sensei to wa sono kabu no hiritu no koto, anata no ho: ga ooku motte-imasu to yu: koto-wa hanasite nai desu ka?

K: Hanasitemasen.

I: No, I didn't talk about it.

I- Didn't you ever talk to the Rev. about the percentage
of the stock, that you would have owned more?

K-I didn't talk about it.

A: Did you have any such conversation with Michael Warder, who was the president of Tong Il?

I: Toji no syachoo datta Mike Warder to sono yooji hanasi-o sita koto-ga arimasu ka?

I: ~~I may have, but I~~ don't recall.

I-Have you ever talked to Mike Warder who was the president then, about the same thing.

K-Possibly, but I don't remember it.

A: What kind of conversation did you have with Mr. Warder?

I: Warder-san to sou yuu koto de wa nasi sita naraba donna hanasi-ga attaka (unclear)?

K: Watasi wa sita nai, watasi-wa wakaranai desu ne. Naseka to yuu to watasi-wa jitumuteki na ueni no hoo wa watasi-ga yatte masitakara, kare-ga hituyoo na toki ni sign-sitekuretandesu ne. Tatoeba kabu ni sign-sitekureru toka, sono teido no koto desu.

I: When he was wanted to affix his signature, he did. But outside of such matters we didn't have too close a contact.

I- If you had such a conversation with Mr. Warder, what did you talk about?

K- I didn't. I don't know. Because I took care of the practical business affairs. When necessary, he signed things for me. For example sign the stock -- it was at such a level,

A: Did you have any conversations with Michael Warder as to whether or not you should own more stock in Tong Il than Reverend Moon?

I: Aaa, Mike to hanasi-o sita, nai, jibun-ga desu ne sensei yori mo motto kabusuu ooku motte hoo-ga ii darou to, sonna hanasi-wa nakatta desu ka.

K: Anmari ooki na kaisya demo naisi, jibun de minna kettei sita desu ne, watasi-wa.

I: Well, our company was not a huge operation, and many matters could be decided by me simply.

I- In speaking to Mike that it would be desirable that you own more stock than the Rev. -- weren't there such a conversation?

K- It's not a very large company. As for me, I made decisions on all matters.

A: Answer my question: did you have such a conversation with Michael Warder?

I: Ano: Mike Warder to sono yoo na koto de hanasi-o sitan-de yuu ka?
sinakatta no de yuu ka?

K: Sitemasen.

I: No, I didn't.

I- Did you or didn't you have conversations with Mike
Warder on such matters?

K- I didn't.

A: Now, ...

K: Hakkiri oboetemasende hanasi-wa hituyoo-ga nai desu ne.

I: I don't recall, as I said, clearly, and I don't see the dire need for doing so.

K- I don't remember clearly, but (such) conversation
is not necessary.

A: Tell the grand jury why you bought a thousand shares of Tong Il in January 1974.

I: Ano: kono daibaisin ni desu ne, naze ano kabu kore katte itadakitaine
desu keredomo, 74 nen no itigatu ni issen-kabu okai ni narimasita desu ne.
Sore de ....

I: Did you ask why?

I- Well, I want you to tell this grand jury from your
own mouth that in January 1974 you purchased 1,000
shares of stock. And ...

A: Tell thb grand jury why you bought it.

I: Naze okaini natta ka?

K: Sore-wa toitu kigyo-ga kongo ohkiku naru tame ni kane-ga hituyoo
datta desu ne.

I: There was a dire need for Unification Church to grow, for the expansion,
and we needed it.

K: Hattensaseru tame ni hituyoo dakara sono kane-o (unclear). Sore-ga
nani-ka okasii no de syooka.

I: Anything wrong with it?

I- Why did you purchase it?

K- That's because for the future development of the
Unification Industry, the money was necessary.

K- In order for the development, that money ... (unclear)
Is there something wrong?

A: Did you say Unification Church or Tong Il?

I: Ano: kyookai-ga ookiku naru tame ni to yuware masita-ga.

K: Toitutoo to yuu no wa, toitu to yuu no-wa eigo de yuu to "unification," kankokugo de yuu to TongIl to yuu no desu ne. Nihongo de yuu to toitu to yuu no desu. Dakara kaisya no namae-wa Tong Il Enterprise to iimasu. Dakara Tong Il Enterprise no hatten no tame ni kongo business-o ookiku suru no ni hituyoo dakara soko ni ireta wake desu ne.

I: I repeat, for the expansion of Tong Il Enterprise we thought it's necessary that this had to be taken care of.

I- Well, you said for the expansion of the Church ...

K- "Toitu" in English is "unification," in Korean it's "Tong Il." In Japanese it's "Toitu." Thus the name of the company is Tong Il Enterprise. That's why. For the purposes of the development of Tong Il Enterprises, to expand the business in the future, (the money) was necessary and I put it there.

K: Dakara Tong Il to yuu no wa watasi-ga Nihongo de yuu Toitu Sangyoo no koto desu yo ne. Nihongo de yuu to Toitu Sangyoo to yuu n desu.

I: And I might make one explanation, That is, Tong Il Enterprise is called in Japanese, Toitu, which means unification, so in three languages phonetically there are three different names -- what appears to be different names, but representing the same thing -- one in Korean, one in Japanese and one in English.

K- Thus Tong Il is what I call in Japanese "Toitu Sangyo" (Toitu Industry). In Japanese, it's "Toitu Sangyo."

A: Was the sole reason for your investment in January 1974 the fact that Tong Il Enterprises needed additional money? Was that the sole reason for your investment -- that Tong Il Enterprises needed additional money to expand?

I: Ano: Tong Il no hatten no tame ni doo sitemo hituyoo datta to yuu sore dake no riyuu de 74 nen no itigatu ni kabu no kounyuu-o nasatta no desu ka? Mattaku sore dake no riyuu de?

K: Soo ja nai desu ka?

I: Yes.

I- You did what you did in January 1974 concerning the stock for the sole purpose of the development of Tong Il, and that it was necessary to do so? For that reason alone?

K- I think so.

A: Were there any other reasons for your investment?

I: Sono toko ni wa anata no tosi to site toyusiyoino hoka ni riyui ga nakatta desu ka?

K: Watasi, chotto tukarete kara deto mo ii desu ka?

I: I'm tired. May I step outside, that I am tired?

I- Weren't there other reasons such as for your own investment purposes?

K- I am a little tired. May I go outside?

A: Sure. I'd like the record to reflect that I'm also going to turn off the tape recorder. (break)

A: Now, Mr. Kamiyama, I was asking you about your hundred thousand dollar investment in Janaury 1974. Were there any other reasons, were there any other reasons for that investment, other than the fact that Tong Il needed money?

I: Ano', mata 74 nen no itigatu no ju-man-doru no koto kon desu kere do, Tong Il-sha no hatten no tame ni to yui mokuteki igai ni nanika Toisijo no mokuteki-nado-wa nakatta no desu ka?

K: Watakusi, tonikaku hatten no tame ni hituyo dato omottakara irete orimasu. Sono hoka no riyui-o ie to yuwarete mo watasi-wa wakaranai desu ne.

I: I still believe that we needed it for the expansion of the Enterprise. If you're still insisting nailing down any other reasons, I'm afraid I can't find any of them.

I- Well, coming back to the case of 100 thousand dollars of January 1974, other than the purpose of developing Tong Il Enterprise, weren't there some investment purposes?

K- I think I only thought then for the development. Even if you insist on telling me to give other reasons I don't know (what to tell you).

A: As you stood here today, do you recall any other reasons other than an investment in Tong Il?

I: Sore de ima koko de desu ne, anata-ga syuttei sarete iru nodesuga, koko ni nanika motto hoka ni riyui-ga atta to yui koto-wa omoi dase masen ka?

K: Tonikaku syui-wa (?) hatten no tame ni irete to yui koto desu.

I: At any rate, I still insist that for the sake of expansion I did so, and I can't remember any other.

I- And, now here, you are in the court. Can't you recall that there were some other, more reasons?

K- At any rate, (I?) put it in the sake of development.

A: Were you having any immigration problems at the time?

I: Anoo, toozi desu ne, anata-wa iminkyoku to nanika mondaiku-ga arimasita ka?

K: ??.... Immigration to....?

I: Iminkyoku to nanika ayugaku no koto toka, visa no koto de ....

K: Mondai arimasen ne.

I: No, I didn't experience problem with them.

I-Well, at the time, did you have problems with the immigration office?

K-??? .... With the Immigration?

I-With the Immigration Office, say about the entry into this country, visa problems?...

K-I didn't have any problems.

A: Did you purchase a share in Tong Il in order to enable you to stay in the

K: Ei, Watasitati-wa desu ne, watasitati-wa seiyui sinjiatte iru sekai nano desu ne. Soko ni doosite loan agreement-ga hituyoo desu ka?

PAGE 34.

I: Anoo, Tong Il no kabu-o kounyuu-saremasita keredomo, sore-wa anata no zaibei, taibei-o gooho-ka-site motto nagaku koko ni taizai dekiru to yui koto no tame dewa nakatta no desu ka?

K: Watasi chotto lawyer ni soudan site mitai desu ne.

I: May I have a word with my counsel?

K- Well, as for us, we live in such a world of mutual trust. Why should there be any need for a loan agreement!

PAGE 34.

I- Well, you purchased Tong Il stock, but didn't you do that as a means to legalize your stay in this country and in order to prolong your stay here?

K- I would like to consult my lawyer.

A: We'd like the record to reflect that the witness is leaving the grand jury room, and I'll again turn off the tape recorder at this time. (break)

A: Mr. Kamiyama, have you consulted with your attorney?

I: Anata, bengoshi-san to soudan nasai mashita ka?

K: Hai.

I: Yes, I did.

I- Did you consult with your lawyer?

K- Yes.

A: Did you make your investment in Tong Il in part for the purpose of obtaining the right to stay in the country for a longer period of time?

I: Anata, Tong Il e no toshi nasatta no desu ga, sore-ga subete no mokuteki dewa nai ni site mo, kono kuni ni gohoteki ni nagaku taizai-shitai, dekiru tame ni nasatta no desu ka?

K: Sakki yutta yoi ni Toitsu Sangyo no hatten no tame ni sore-o toshi shitan de atte, soiyu koto-o shitte hoshii desu ne.

I: I want you to know, sir, that I did that investment purely for the expansion of the Tong Il Enterprises.

I- Well, you invested in Tong Il, but did you do so, although it may not be the sole purpose, in part to enable you to prolong your stay or your desire to stay in this country legally?

K- As I have told you earlier, it was for the purpose of the development of Tong Il Enterprises that I invested, and I want you to know that.

A: And your visa or immigration matters didn't enter into that at all, is that correct?

I: Suisuru to anata no okangae niwa visa no mondai dateka immigration no

I- Then, can you say that, it never entered in your mind.

EXHIBIT K

Kinko Sato's Brief Personal History

Name: Kinko S. Sato

Present Position: Attorney at Law

Date of Birth: 1934

Pelce of Birth: Tokyo

Personal History

1958 - graduated from the Faculty of Law, University of Tokyo

served as public prosecutor of the Ministry of Justice
at Tokyo District Public Prosecutors Office and later at
Yokohama District Public Prosecutors Office for seven years

1970 - research fellow at Law School of Harvard University
72

Professor and Deputy Director of UN Asia and Far East Institute
for Prevention of Crime and Treatment of Offenders

Council of Prime Minister's Office

Acting Representative of Japanese Government to the General
Assembly of UN

UN Fellow for the Human Rights Fellowship

1981 - present position

given lectures at Harvard and Columbia Universities, Japan Society
and so forth

currently a member of Prime Minister's Committee on Peace and
Security

Publications

The Bargaining Society: American Criminal Justice, Tokyo 1974

The Yama and Godess: Japanese and American Justice, Kyoto 1979

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EXHIBIT L

INTERVIEW OF MR. EISUKE SASAGAWA ON HIS RE-TRANSLATION OF THE GRAND JURY HEARING OF MR. TAKERU KAMIYAMA BY ATTORNEY KINKO SATO

August 25, 1984
7:00-8:00, 9:00-11:00 p.m.
The Washington Hotel, Tokyo

(Q = Sato; A = Sasagawa)

Q May I have your name, sir?
A My name is Eisuke SASAGAWA.
Q When were you born?
A I was born in Nerima-ku, Tokyo, in 1950.
Q Then, you are Japanese. What is your present address?
A 6-11-5, Kiba, Koto-ku, Tokyo.
Q You entered the Department of Indonesian Studies of Tokyo University of Foreign Studies after you graduated from a high school in Japan. Is that correct?
A Yes, that is correct.
Q When was that?
A It was, well, 1969, the spring of 1969.
Q The 44th year of Showa, and you studied there for three years?
A About two years, less than three years.
Q In other words, in Japanese universities there is a so-called general education program, the general culture course?
A In that university, students have to study languages a lot more than in other universities.
Q I see, within the same general culture course, the curriculum includes more language courses.
A Yes.
Q And the curriculum includes Indonesian and Dutch language courses?
A That's right.
Q Are there also English language courses?
A Well, students can take them if they want.
Q Did you take any English language course?
A No, I didn't take any.
Q You studied mostly Dutch and Indonesian.
A Yes, that's right.
Q Then you went to Kiel University (West Germany)?
A Yes.
Q What year was that?
A Well, it was 1971.
Q That would be the 46th year of Showa.
A That's right.
Q About what month of the Showa 46 was it?
A Well, about June or July and I entered the university in the fall.
Q Which department of Kiel University did you enter?
A The department, the major was called Germanistik in German. It means: German language and literature.
Q You took the entrance examination for the university?
A No, I entered by documentary screening.
Q Documentary screening. Any scholarship grants?
A I didn't receive a scholarship, but, there was no tuition.
Q Why was there no tuition?
A At that time, no school tuition had to be paid in Germany.
Q Is Kiel a national university?
A German universities are all national universities.
Q A national university, and are all courses completely free of charge?

A Yes, well, they only charged a small amount for necessary administration fees.

Q I see, and how about the rest of your living (expenses)?

A Well, in a student dormitory, you can live relatively, or very inexpensively.

Q I see, doing some part-time work did you do?

A Yes, well, there was only a limited amount of time.

Q What kind of part-time work did you do?

A Well, I worked at factories and such.

Q As a factory employee?

A Well, yes but not a big post. There was a medium-size socks factory, a textile factory near a shipyard, and I worked there as a part-timer for some months out of the year.

Q What kind of job was it?

A Well, cleaning machines, and similar jobs, or else, carrying things, just helping.

Q And money was sent to you from home?

A Well, yes, I asked for money to be sent.

Q Was this every month?

A No, not regularly, but when I ran out of money.

Q I see. Your parents were't against it?

A Well, not so much; they didn't really approve either, but.

Q Are your parents still living?

A Yes.

Q What is your father's name?

A Kazuya SASAGAWA.

Q How would you write that?

A (Describes the kanji, Sino-Japanese characters)

Q I understand. And you studied at Kiel University for 3 years?

A Yes.

Q You studied, and did you get some kind of a degree?

A No, I didn't get a degree, but, well, I had many interesting experiences.

Q Such as?

A Well, I had exciting experiences in terms of linguistic studies, I participated in a research of dialects of Northern Germany, and went several times to study the dialects of the Netherlands and around Belgium.

Q I see, you worked under a professor on the research of dialects?

A Yes.

Q Under a professor a Kiel University?

A Of Kiel University, and on my own also.

Q I see, and then from there you went on to Israel. What year was that?

A It was in 1974.

Q Where in Israel did you go?

A Well, as far as cities go, Tel Aviv, Jerusalem, and Eilat, I also went to various kibbutzes. In the end, I studied a bit at Hebrew University, to round things out.

Q What did you study?

A Judaic theology, the Talmud, philosophy; the Old Testament, and comparative religion as a regular student.

Q What department did you enter?

A In this case, Hebrew University has courses in English for students, called the One Year Program, where American students come and take credits so that they can use them in American universities, transfer them.

Q The credits can be commonly used,(in both universities).

A Yes, I entered that program, and took courses in Hebrew and English; at that time, they weren't useful, but in the end, I sent the credits to the State University of New York, and was able to make use of the credits.

Q Excuse me, what kind of credits were they?

A Well, Judaic philosophy, History of Jewish thoughts, philosophy, comparative religion.

Q You earned credits for all of them?

A Yes, I did.

Q I see. Then you went to New York?

A Yes.

Q When did you go to New York?

A Uhh, in 1977.

Q In Showa 52, you went to New York, and what did you do there?

A I went to university, worked part-time, did translation work.

Q You returned to Japan in ?

A 1982, so for five years.

Q Five years in New York, and the university was New York University?

A It was called the Empire State College.

Q What did you study at Empire State College?

A I had all the credits I had earned until then transferred, and rounded things up - anthropology, comparative literature and culture, things like that, for about a year. I went to that university from about 1978.

Q And you graduated from New York Empire State College?

A Yes, I did. After that I entered the graduate school of New York City College, and stayed for about two years, but I'm taking a leave at present.

Q Then at Empire State College, you received a B.A., Bachelor of Arts, and then went on to graduate school, which was in what year?

A I think about 1980.

Q What did you major in at graduate school?

A Anthropology.

Q Anthropology?

A Cultural anthropology and physical or biological anthropology.

Q Biological anthropology?

A Well, I studied things like evolution, fossils, and such. At the same time, linguistics, and something similar to archaeology.

Q You mean you took interest more in the concrete anatomy, or biology or medicine, rather than culture?

A Yes, that's right.

Q Then you entered in 1980 and until you returned in 1982, you were a graduate school student?

A Well, I worked part time and went to a 'shiatsu' school.

Q You went to a 'shiatsu' school, and what sort of part time work did you do?

A I worked at restaurants, did translation work, and taught some Japanese.

Q Then as a student, you were doing such part time work?

A Yes, trying to live as simply as possible.

Q In Manhattan?

A Yes, I lived in Manhattan for about two years toward the end of my stay in New York, but mostly in Brooklyn, where there were a lot of Jewish people, as I had a lot of Jewish friends.

Q Then what month in 1982 did you return to Japan?

A About June.

Q June, and what do you do now for work?

A In the language area, translating, interpreting, and teaching English at times.

Q You're a free-lancer, and don't belong in particular to any organization?

A Well, I'm doing jobs for several places.

Q For instance, Simul, Inc. (interpreting, translating, company) or places like that?

A Simul, I don't know why, but no matter how many times I apply, they will not take me up. Well, I think you need connections to get a job there.

Q Then, what other places?

A Other agents are small to medium size, so I do several.

Q Places like congress organizers, conference services?

A Yes, to a certain extent.

Q I see, and you aren't connected to those places?

A I get jobs from some of them.

Q Which place, for instance?

A Well, I did some work for Bravice, but recently, no. I don't know if they've had enough of me, but I don't get calls lately.

Q In those cases, which language do you use, English, Japanese, and Hebrew?

A My job centers on English and German.

Q English, and German, I see.

A Interpreting, I don't like translation work too much, so.

Q You work as an interpreter?

A Yes, I'd like to do interpreting work, but it doesn't come very regularly.

Q Things must be difficult.

A In the sense that I can use time freely, it's good, but when one's income isn't stable, that's not so good.

Q You said that while you were in America, you did translation work and sometimes taught Japanese?

A Yes.

Q Then do you know a company named Nihon (Japan) Services Corporation?

A That, one of my Jewish friends, I don't know whether his meeting me gave him the idea, but he started a translation company called Nihon Services Corporation...

Q This Jewish man, if you don't mind giving his name...

A His name is Brown, Bradford Brown.

Q Bradford Brown?

A Yes, he is a full-fledged lawyer.

Q Is that so?

A He was working with the Bronx police in New York.

Q The police?

A He was a policeman.

Q I see.

A This man was born in Japan or something and was very much interested in Japanese culture, which is what started my acquaintance with him; since he helped me out with my visa and things, we got along. While he was a policeman, he studied law, became an attorney, and independently began to manage a company.

Q And the company was located in One Union Square, New York?

A Yes, it was a rather dirty building.

Q Do you mean you and Mr. Brown were managing the company?

A Mr. Brown was the manager and I was employed there with two or three others.

Q They were in a position similar to you?

A Yes, that's right.

Q Were they Japanese?

A One was an American studying Japanese at Columbia University. Two people, Mrs. Yuko Kashiwagi and I were Japanese. Her father, Mr. Yuuichi Kashiwagi is a famous translator and lawyer in Japan, quite old.

Q How do you write the name Yuko?

A I think Yu[illegible] is hiragana.

Q Is she a student also?

A No, she was married to an American.

Q So she could speak both Japanese and English?

A Yuko-san used to go back and forth between Japan and the U.S. while she was small. She is bilingual.

Q I see. So Ms. Kashiwagi, yourself, the American, and who did you say the other was?

A William.

Q William?

A A man named William Berrett.

Q I see, that means you were working with these people and Mr. Brown, is that right?

A Yes.

Q And when was Nihon Services established?

A About the summer of 1981.

Q Does the company still exist?

A I think so. Mr. Brown and I had a quarrel, and I haven't talked with him since then. This was one of the reasons for my coming back.

Q Well then. About the translation problem of the testimony of Mr. Kamiyama at the Grand Jury. Have you ever met the Prosecutor, Mr. Flumenbaum?

A Yes, I have. Several times, together. Maybe, I shouldn't say together, but..

Q You mean, together with Mr. Brown?

A No. Flumenbaum was the one who called up Nihon Services and requested the job.

Q Let's slow down. Regarding this case of Mr. Kamiyama's testimony before the Grand Jury, why did Nihon Services accept the job in the first place?

A Probably, because this man named Brown used to be a policeman, when he started the enterprise, he passed out his name to

the people he knew or had contact with, like the DA, I think it came through that kind of a connection.
He had been working as a policeman for a long time, and being a brave man, he was involved in many criminal cases, so he was quite well known among the people in the police department.
Q What do you mean by involved?
A He arrested criminals himself, for example in very dangerous situations.
Q I see. So this person (Flumenbaum) went to Mr. Brown (about the translation job).
A I think he went because he had some kind of a connection.
Q Did you say the State Attorney, Mr. Flumenbaum came to request the job? Specifically, what kind of a request was it?
A He wanted us to send a translator. The job was to check the words in a tape. So I went to the office of Mr. Flumenbaum which was about two or three stations away on the subway.
Q You met him there, and how did you meet with him?
A Yes, the questions that he asked me, first of all, was whether I believed in any religion or not. Well, I answered that I did not belong to any particular organized religion. What he was saying was that since the case had to do with the Unification Church, it was not good if I were related to the same Church. So I replied that I did know a person in the Unification Chruch but I was not directly related. Then we began the work.
Q I see, and when was that?
A I think it was the autumn or about the end of 1981.
Q Originally, why had the Prosecutor brought this job to Nihon Services?
A When I went to the Prosecutor's office the first day, the Prosecutor said that the Interpreter was doing well, but there seems to be a problem in his translation, so please check this part.
Q What exactly does, 'there seems to be a problem' mean?
A Well, probably the translation, I took it that someone was saying it was not accurate, or deceptive, and I thought that he wanted me to check out whether this court interpreter was intentionally making errors in translation. Later, I found out that Mr. Flumenbaum had a certain amount of trust in the court interpreter. So, what Mr. Flumembaum said in the beginning about the interpretation being a problem, I misheard, and now I think that what he was saying was that from the beginning, this Defendant Kamiyama was guilty of perjury, and wanted to pursue that point thoroughly.
Q Does that mean he wanted to pursue it as a charge of perjury all the way?
A Yes, I think that's right.
Q What do you mean by to "check the tape" of Mr. Kamiyama's testimony at the Grand Jury? What did you do specifically?
A There were several tapes which recorded the testimony before the Grand Jury. I was given two or three of the tapes and also,

at the same time, the record in English, transcribed by the court stenographer. I was asked to compare this with the tape, and to find any discrepancies between the words of Mr. Kamiyama and the Interpreter.
Therefore, I stayed in a quiet room listening to and comparing the words of Mr. Kamiyama, the Interpreter and the questions given by Mr. Flumenbaum. Also, I compared that with the record in English. The differing parts I wrote out in Japanese, and then translated them word for word. In the record, the Interpreter says this, but Mr. Kamiyama says this in Japanese, and so on.

Q I see.

A I think I wrote out how the Interpreter translated the words into Japanese, on reporting paper and gave it to Mr. Flumenbaum.
That took me several weeks to do.

Q I see. You mentioned that there were several tapes that recorded the testimony of Mr. Kamiyama at the Grand Jury.

A Yes. At first I think I was given about three 30-minute-30-minute tapes.

Q About three 30-minute-30-minute (1 hr.) tapes.

A Yes, and...

Q When the Prosecutor, Mr. Flumenbaum picked out the tapes, did he do that on his own?

A Well he marked three or four key sections in the English text with a pencil, and he told me to listen to the tapes and to write out what he was saying. I've forgotten exactly what places he checked.

Q I see.
This is the English version of the testimony of Mr. Kamiyama at the Grand Jury.

A Yes, this is it. I was given this.

Q With this?

A With this, I was told from this to that page. The one that was clipped together with a pin. I was given two or three days worth and I was told from which page to which page, and to listen particularly carefully to certain parts. So I listened to that part, and wrote it out in Japanese.

Q So the three tapes. You mentioned that those were about two or three 30-minute-30-minute tapes. Did you hear them all?

A Yes, I think the cassette tape of the Grand Jury was 30 minutes long (on one side) so it could only record for an hour. Depending on the session of the Grand Jury, there are some that take over an hour. Apporximately 3 hours at the longest. So, the tapes I was given at first was not all, but only a part of it, I think.

Q Well, then, those key parts;do you remember which parts they were?

A I don't quite remember. If I look at it, I think it will come back to me.

Q Do you remember what Mr. Kamiyama was testifying about?

A No, I don't remember. ...Something about checks...

Q Something about checks. The right to issue a check or...

A I think it was something like that. I'll remember if I look at it.

Q What about the part of the Oath which was held before each session?

A At first he completely ignored the Oath.

Q I see. Well then, you examined it for that reason. So you don't remember how and which parts you examined, but you did hand in a report. Is that right?

A I wrote the Japanese down on the left hand side of the paper. No, did I write it in directly on the paper? You have the copy of that record (transcript), right? I think I wrote it in on the same copy as that I just saw now.

Q Into this English record?

A Yes, I wrote in it directly, but I didn't write the Japanese. I translated the words of the Interpreter's Japanese and the testimony of Mr. Kamiyama and wrote the translation in the margin or on the back of the paper, commenting that these people said those things in Japanese.

Q What you wrote then, you wrote it in this way: the English says this, but the Japanese meaning which you, Mr. Sasagawa heard was this.

A Yes, by saying precisely, this part and this part is wrong. I explained them to Mr. Flumenbaum orally or by writing on the back of the paper.

Q I see.

A Yes.

Q So that means Mr. Flumenbaum received a direct explanation from you.

A Yes, that's right. So I explained to Mr. Flumenbaum orally things like this person is saying such and such, but actually means this, etc. Anyway, I was working in a room beside his office, and we talked a lot while we were doing this.

Q And did Mr. Flumenbaum say anything to you about this?

A He said things like, 'that's good,' or 'I'm glad I heard that'. That's how we did it sometimes.

Q Was there ever any difficulty?

A He didn't show that there was any.

Q I see. Now, this is written all in English; by reading this only, you can't know what Japanese was used.

A Yes, that's right. For those who don't understand English; No I mean, those who don't understand Japanese.

Q And also the English. The English was not written exactly as the Interpreter, Mr. Mochizuki spoke, but rather...

A No, the English is exactly as translated by Mr. Mochizuki.

Q Exactly?

A Yes, when I first heard Mr. Mochizuki's English, he spoke very beautiful English that I thought he was a nisei, a second-generation Japanese. Later, I heard that he was a graduate of the Tokyo University of Foreign Studies as well.

Q Is that so.

A Except, he did make a few mistakes.

Q Do you remember specifically what they were?

A I don't quite remember, but there were several places clearly mistranslated.

Q I see, compared with the Japanese, you mean?

A Yes, I couldn't explain this to Mr. Flumenbaum at the time. But when I wrote everything out and translated the whole transcript at the end, I made a report of the errors made by the Interpreter. I explained everything, such as, your question was mistranslated as follows..., and wrote it out on reporting paper and explained them all with annotations.

Q And the reporting pad that you wrote everything out on. What did you do with it?

A I handed them all to him. I think Mr. Flumenbaum gave it to his secretary to have it typed into a word processor.

Q About how many pages were there?

A Several hundred pages, I think.

Q Was there that much?

A Yes, there was.

Q I see, so it should be stored in a word processor.

A Yes, it should be. I haven't seen it, although.

Q I see. And on Dec. 15, 1981, did you testify before a Grand Jury on this matter?

A Yes, I've forgotten the date, but I remember testifying once or twice.

Q And on reading your earlier statement, it says you made a first testimony at the Grand Jury on Dec. 15, 1981.

A I don't remember on what date I testified.

Q I see. Anyway, you made a testimony around that time. Why did you testify?

A I asked Mr. Flumenbaum how and what to testify, and his reply was that it was only to receive confirmation for what I was doing. I didn't think there was any difficulty, at the time, as it was only an answer.

Q Well then, what did you testify about?

A What I testified had to do with what I was doing. I think that was all. I don't quite remember.

Q It is certain that you became a witness and testified?

A That's certain.

Q I'm confirming right now these things of that time.

A I think that was about the extent of my statements then.

Q (Did you testify) that there were such and such errors?

A I didn't enter into details.

Q You just said, this is the kind of work I am doing?

A That's right.

Q Was that adequate...?

A Well, rather than a so-called witness, I just gave a testimony, that was all.

Q And then, after that, you testified again, right?

A Twice or once, I don't remember.

Q But didn't you say (you testified) twice previously?

A Well, that statement I didn't personally write, so, well, if there is a record that says twice, it must be twice, and if the record says once, I think it's once, but right now, I don't remember if it was once or twice.

Q Twice, being the second time after first testifying in Dec, '81?

A From about December, '81, I had gone a number of times a week, and into 1982.

Q From December '81, how was that?

A Yes, that's right, I forget whether it was autumn or November; and then I think it was after the New Year's, that Mr. Flumenbaum asked me to do everything because the Defense Attorney was beginning to make an issue out of the interpretation, so I was to write out all of the statements in Mr. Kamiyama's Grand Jury hearing from beginning to end, and to do the translations.

Q I see, that was in 1982 already.

A I think so.

Q So, you were requested by the Prosecutor once again?

A It was more a continuation rather than, being asked once again.

Q In the beginning, the request was to examine about three of the tapes.

A Only the crucial points of the three tapes, but this time (I was asked) to do everything from the very beginning.

Q Yes, so, first of all there are the tapes. Those very (time-consuming) tapes.

A Well, let's say one Grand Jury session was two hours, which would be two tapes, and if three hours, three tapes; all together, four days' worth of tapes? Although I don't remember so well.

Q This is all in English, isn't it?

A That's right.

Q So you were listening to the tape as you were reading the transcript?

A That's right, while looking at the transcript for reference, I listened to all of the tapes, wrote all of the Japanese out. Then I wrote beside the Japanese, what shall I say, the correct translation, word for word.

Q And, excuse me, to ask more in detail, first, the Prosecutor's question is in English, right? And that English was...?

A The Prosecutor first asked a question in English, and the Interpreter translated that into Japanese, and Mr. Kamiyama answers in Japanese. Then the Interpreter translates that Japanese into English. I wrote out the Interpreter and Mr. Kamiyama's Japanese statements, on one side of a reporting paper, and on the other side, wrote out the English translation as accurately as possible, verbatim. I think it was half the size of a sheet of reporting paper, I forget which side of the paper I used, left or right though.

Q On one side you wrote the Japanese, and the corresponding English also, concretely speaking, you did the work of translating Japanese into English?

A That's right, after writing out the Japanese accurately.

Q Did you write out the Japanese in Romanized Japanese?

A No, I wrote it out in kana and kanji - the people over there can't understand it anyway, so I wrote it out accurately, and then using a dictionary, when necessary; there were parts of Mr. Kamiyama's statements spoken very fast and I listened to it several times, but parts I didn't understand I left a question mark. The rest I understood and I believe I wrote it out in either the left half or right half of reporting paper. Or else, perhaps I wrote out the Japanese first and then below it the English translation, I forget which, the right half or top and bottom.

Q I see, then I just mentioned that you translated the Interpreter and Mr. Kamiyama's Japanese into English, but the Prosecutor's English questions were translated into Japanese, so you had to check to see if those ware accurate as well?

A I checked that, too.

Q And then?

A Well, that wasn't very important and what was important was whether Mr. Kamiyama's statements were accurately translated into English, verbatim; of course how accurately the Interpreter translated the Prosecutor's questions was important, but... (for instance,) this person is answering in this way, this was omitted in the Interpreter's translation, this was translated awkwardly in a roundabout way by the Interpreter, Mr. Kamiyama is mumbling something here and here. At times he would mumble, I don't know whether the microphone was too far or too close or what, but as much as I understood (I translated). Some parts were not clear. As must as I could hear, I worte out all of the Japanese that Mr. Kamiyama and the Interpreter said, and added the translation to it; as I was using the room next to the Prosecutor, I added comments at times, such as, the voice could not be heard, and other complaints and submitted it.

Q So, that of course means the transcript, the English transcript and...

A The transcript was 99.9% correct, so it was no problem.

Q I see that means, at least what is in English, the transcript has recorded as is?

A That's right. I'm impressed that the copy was made that accurately.

Q There was no discrepancy between the English on tape and the English of the transcript?

A Well, at times, there were parts where the stenographer was questioning the interpreter as he didn't seem to understand the pronunciation or something.

Q I see.

A For instance, there was a part about bringing in flower vases from Korea, and the Interpreter said, 'flower vase'. The stenographer recorded that the Interpreter said 'flower base'. The stenographer asked what the word was, whether it was a flower vase (pronounced 'vaas').

Q So, you did do the entire job. It must have taken a lot of time.

A Yes.

Q How long did it take?

A Several months. But, I think Mr. Brown make good money out of it.

Q That must be so.

A I myself didn't earn too much, though.

Q Is that right?

A I was paid by the day. It was a salary.

Q And as to the intellectual labor of accepting this job, you weren't (paid) so much?

A That's right.

Q I see, about how many months did it take?

A It was dragged out, about till April, perhaps?

Q So, about four to five months?

A Yes.

Q And after keeping it up for four to five months, about how many pages was it in all?

A Well, American reporting paper is bigger than Japanese reporting paper, so I don't know how many hundreds of pages of that there were.

Q I see, and the Prosecutor, as you said earlier, (gave) all of it...?

A He probably made his secretary type all of it into a word processor.

Q It is certain at least, that you submitted this to the Prosecutor?

A Yes.

Q Then, after this job was over, did you testify before a Grand Jury? You don't remember that?

A After it was over, I don't remember that. I think after it was over, I saw in a New York paper that the guilty verdict was handed down, or something like that, and people were talking about it, wondering if that's the way things were. But that was probably while I was still in New York, so wasn't it about May or so when the guilty verdict was handed down at the Grand Jury?

Q I see. I myself listened directly to part of this tape and listening to Mr. Mochizuki, the Interpreter, as an Attorney, I felt that a human rights problem was involved. There are many parts of it, but first of all, you may remember this, the opening procedures. Mr. Kamiyama was called as a witness so he must be sworn in.

A That's right.

Q When we look at how he gives an Oath in that part, well, and I have written the English and the Japanese that I heard on tape. If you would take a look, here, on July 9, 1981, the first morning session, the Grand Jury side says,

A (Mr. Sasagawa read as follows:) "Do you solemnly swear that the testimony you are about to give to this Grand Jury in the matter now pending before it, shall be the truth, the whole truth and nothing but the truth, so help you God?"

Q It says, "Do you solemnly swear," doesn't it? "Will you swear?" is what it asks. But when we see how this was translated, this is the Japanese in the tape.

A Well, this is Mr. Mochizuki's way of talking, and in this particular case, he was probably not taking notes- when I interpret, I always translate by taking notes, but my impression is that Mr. Mochizuki may have done the interpreting without any note paper. Some people do interpret without holding anything, but I can't remember things so well, so I try to take notes, and even if 100% cannot be covered, I try to omit as little as possible. But in this case, it was too much rhetoric and since there was no corresponding phrase in Japanese, I think that Mr. Mochizuki translated with a sense of, 'in summary, please state the truth.'

Q So he says, "Here, I would like you to kindly convey the truth wholly, only the truth." But in actuality, he is raising his hand and saying, "Will you solemnly swear to state the truth?" whereas the translation of "Please convey only the truth," is "I think I would like you to convey the truth." How is that as an interpreter?

A Well, rather than a linguistic problem, this becomes more sociolinguistics and that of anthropology as well, and you could say it is a mistranslation.

Q It's just that, the court, or a trial is a procedure, you-see.

A That's right, but when you wish to translate, if there is a word that accurately corresponds to it, that's good, but for instance "So help you God," this can be (translated) as "as so,", well, and it can also be translated "under God"...

Q How would you translate it, Mr. Sasagawa?

A In this case, well if I were to translate it then and there, it would be quite difficult. But looking at it on paper as I am now and translating it and actually translating it standing in court are...

Q If you were asked to do it right away?

A Right away, well the situation is completely different so I can't say, but, it is difficult, and I would have translated it as something like, "Do you swear to convey (tell) the truth?"

Q At any rate, if the word, "will you swear?" is not included...

A That's right, without it, it would be difficult as a translation, I think. The Japanese people do not understand the meaning of "Oath" very well, but, of course it's important in American courts.

Q Then, it would be difficult in America, if you put it that way. In America, it's a myth, so to speak, that Americans will say the truth (under oath). However...

A It is difficult, and I think Mr. Mochizuki must have had a hard time about this point, also.

Q Well, I don't think Mr. Mochizuki put in that much effort (as he should have) but this would be a subject of debate. So did you tell these things to Prosecutor Plumenbaum?

A Well, even if I did not tell him, I should have written these things out and submitted them, so he should have known.

Q And the problem about the Prosecutor asking (the witness) to tell the truth is, there is another point about the right to stay silent. It's not that everyone has to testify the truth.

A That's right. But in the case of Mr. Mochizuki, there is the consciousness of a Japanese facing a Japanese, and so Mr. Kamiyama, sometimes gets angry while he is speaking. He gets into a temperament so he is angry, but he is grumbling or getting mad against the Prosecutor, and not at Mr. Mochizuki. Mr. Mochizuki probably, thought as Japanese, Mr. Kamiyama and he would understand each other's positions, so without going into so much detail, he said "I think I want you to say the truth." I imagine he wished this not as an Interpreter, but as a fellow Japanese, which led to his translation as given.

Q I see.

A So he may have felt, 'As an Interpreter, I am Japanese, and you have your position as the defendant, but we are both Japanese, so in this court, I think I would like you to say only the truth;' these were the words that came out, in my opinion.

Q Do you mean, being the same Japanese people?

A Yes. So when Mr. Kamiyama gets angry sometimes at the Prosecutor's examination and troublesome questions, he sometimes lets out curse words but the Interpreter of course doesn't translate these and he is getting angry at the Prosecutor, so maybe he thinks he has nothing to do with it.

Q But, sometimes, there are things that this person says, that can't be understood, as an impression.

A I think there were. For instance, he asks (Mr. Kamiyama) "What's he saying?" at one point.

Q In that case, "this person" is?

A Yes; Mr. Flumenbaum. He sometimes, well, I don't know what kind of a man he is, but, isn't he a person difficult to get along with? for a Japanese.

Q Then, about what we were saying, you did the work of translating the Prosecutor's English into Japanese, and furthermore, translating the Japanese that Mr. Kamiyama replied into English. You checked that, right?

A And I forgot to say this earlier, but I did various matters of other correspondence of the Unification Church. Letters from Japan, or letters from America, or that here is a letter in Japanese but will you translate this; there was also a list of names of people who had come from Japan, and I was asked to rewrite their names into Romanized letters, and things like that. This was toward the end.

Q Then, as to the content of the letter, what kind of letter was it?

A Probably, one that a Japanese person had written an American, and another that a Japanese person had written to Japan from New York, and I forgot the contents, but words of religious encouragement; I forget the details but things like that, and the rest I don't remember.

Q About how many letters?

A I forget how many letters, there were several, and the list of names.

Q About our earlier talk, you translated the English (for both sides). That means when the Interpreter's Japanese didn't seem right, in other words, when the Japanese of the Interpreter who translated the English of the Prosecutor seemed strange, you transcribed that. Did you do that for the entire proceedings? Or only the parts you found strange?

A Everything. In the end, everthing, whether good or bad, I wrote it all out.

Q Why did you have to do that?

A I think because the defense raised the question about the

Interpreter, in order to counter that, in that sense, Mr. Flumenbaum wanted everything.

Q So you did everything, and in translating the English of the Interpreter into Japanese, if that Japanese translated from English and the English translation of Mr. Kamiyama's Japanese, as you said earlier, differed, or were wrong, you checked that?

A Of course, when there were extreme differences, of course, he probably read and studied (the report) well, Mr. Flumenbaum. So the mistakes should be self-evident but things like, this part and this part are especially different, or this part sounded like this but it was difficult to catch on tape, that kind of comment I added, and the rest, I think this Interpreter probably interpreted without taking notes. Well, for the most part, the gist of it was clear, but I did submit the report with comments like this detail and this detail were omitted, or this part and this part were ambiguous translations.

Q Mr. Sasagawa, have you experience as a court interpreter?

A Yes, I have, under an attorney.

Q Was it in court?

A No, not in court, but in the attorney's office.

Q You have not worked in court as an official interpreter?

A That's right. I've never stepped into a courtroom with the exception of the time before the Grand Jury.

Q I see, about testifying as a witness before this Grand Jury in particular, it was in December, 1981...

A I'm not certain of the month and day; I didn't write that (statement) anyway.

Q I understand. According to this...it's 1981, December 15, is it, December 15.

A I've already forgotten, I've forgotten when it was.

Q You did give your first testimony before the Grand Jury... if you were told so...

A Well, if I were told so, it must have been about that time...

Q You would think so...

A Yes, I would.

Q But, I think testifying before a Grand Jury is an extremely unique experience.

A Yes, it is.

Q You wouldn't remember if it was once or twice that you did?

A No, I don't remember.

Q I see, do you remember that it was about February or March of 1982?

A I think it probably was about twice. I think it was twice.

Q You do think it was twice? And was it about February or March?

A Yes, it was during the winter.

Q The winter?

A Yes, but my memory...anyhow, in that building...I remember going inside several times. I probably must have done it about two times.

Q I see, well this is a statement, or an affidavit that is attached to your letter.

A Please excuse me. At the same time, perhaps I may have served as an Interpreter at a place like a Grand Jury.

Q That, now...

A No, besides that, actually in court. I don't remember well, but otherwise there's no reason to go to a place like that. Perhaps, I may have been an Interpreter in court.

Q This concerns your experience as an Interpreter?

A Yes, or else, I may have testified twice there. At any rate, I remember going there about two times.

Q Is that so? Then you don't remember whether you did it once or twice?

A No, I don't remember.

Q But for the second time, around February or March, 1982?

A If I did go, it would be about that time.

Q If someone tells you so, you think that's possible, too?

A That's not very far from the truth. I believe I have gone inside that building about twice. That was...one moment, please. What was it, about this case? I don't remember. I may have gone on another case...

Q And the Grand Jury testimony, did you state that this part was wrong, and this part of the translation is not correct, things like that?

A Not details, but I think I testified that I am undertaking such and such a job.

Q By 'I am undertaking,' you mean...

A I think it was a testimony to confirm that I was listening to the tapes and doing such and such.

Q So, it wasn't a testimony stating this part is wrong, or this is correct?

A It wasn't so, but as Mr. Flumenbaum...I forget the question, but I think what I stated in brief was that such a testimony is being confirmed under Mr. Flumenbaum, something of that degree. I think it was short, at any rate...

Q I think there might not be much value in merely testifying that 'I am undertaking' such and such...

A That's right. But I've forgotten what question was put to me.

Q And you didn't appear in court to state whether it was accurate or not accurate?

A I don't think so.

Q Well.

A So, if I can remember the question for the opinion that I testified at that time, it would be helpful, but...

Q I see, you don't remember too much.

A No.

Q Just, as far as the Prosecutor is concerned, he requested you, Mr. Sasagawa, to do the following and you are...

A That's what I asked the Prosecutor, too. What exactly do you want me to testify on in court, I asked Mr. Flumenbaum. And he said, don't worry about it, just answer simply.

Q Then, without much preparation...?

A I made no preparations for the testimony, and I just answered either, yes or no. If I did say more, it was just a word or two, or a sentence or two. I didn't say much.

Q Do you mean that 11 you had to say in this testimony was what the Prosecutor had told you to say?

A That's right. The Prosecutor told me not to say unnecessary things.

Q Didn't the Prosecutor ask you to state whether the translations were correct or not?

A Yes, I think the Prosecutor put such a question to me. The Prosecutor might have asked whether some of the translations were reliable or not. I don't remember clearly, though.

Q When you were asked such a question, how did you answer, as far as you remember?

A I think I answered that the translations were on the whole reliable; or rather, I don't remember clearly what the Prosecutor asked so I can't say definitely. I can't say incorrect things here so I should say I don't remember how I answered.

Q Do you mean, you answered, Yes, to the Prosecutor's question, as far as you remember?

A Yes, that's right.

Q You testified because you were told that you didn't have to worry?

A I think you're right, but I don't remember clearly.

Q As you know, there is a transcript of the Grand Jury testimony by Mr. Kamiyama. It is written in English and do you think it records Mr. Mochizuki's English just as it was?

A It records Mr. Flumenbaum's and Mr. Mochizuki's English as it was.

Q Then, when you read only this transcript, you would think that there was no problem in it?

A What do you mean by no problem?

Q In short, mistranslations would not be understood (noticed) because Japanese is not understood.

A The actual length of the testimony is about twice that of the English transcript because the English was translated into Japanese and the Japanese into English. But the transcript is surprisingly accurate as a record. 99.99%.

Q You mean in terms of English, it is correct in that the spoken English is transcribed accurately here.

A It is very accurate.

Q Is that so. And when you compare the Prosecutor's questions with their Japanese translations by Mr. Mochizuki, and Mr. Kamiyama's responses with their English translations, there are quite a lot of inappropriate and inaccurate translations.

A Well, it seems to me that Mr. Mochizuki was not taking notes while he was interpreting.

Q You mean because he didn't take notes...?

A He dropped many parts.

Q They're omitted. And as a result, the Interpreter failed to accurately translate into Japanese what the Prosecutor asked in English. Furthermore, if he cannot translate into English what Mr. Kamiyama said in Japanese, and there are a number of scenes like that...

A Well, in such cases, I clearly indicated to Flumenbaum that this part was omitted, or this part dropped.

Q What did the Prosecutor say when you told him these things?

A He didn't say anything. He probably studied them carefully later, but he wore a 'poker face' and showed no reaction. But when I gave comments on the translation, he would often say, "That's good, that's good." I once fell asleep ~~while~~ working, and he got angry.

Q Who did you say fell asleep?

A I did, and it was while I was working. As I had caught a co. the night before, and I couldn't sleep, I fell asleep with fatigue. Just for about five minutes or so.

Q Well, that was hard work, wasn't it. When you went through the work, did you notice any specific errors in translation?

A Well, for instance, when you write out checks, about checks in America, you have to spell out the amount. 'Five thousand dollars' for $5000. And you have to sign the check. It seems that this wasn't clearly understood.

Q What do you mean?

A It seems to me that Mr. Mochizuki's translation was beating around the bush without clarifying the most important point. And as I remember it, the word 'manage' was raised as a point of argument. It was translated as 'to be in charge' or 'to keep' but, that is not a mistake. Another point I remem-is that the Interpreter used the word 'purely' somewhere, although I don't know why he used the word. That was also a point of contention.

Q How did these points become a problem?

A It became a problem. It once became a big problem arguing that the Interpreter used the word 'purely', but the word 'purely'was such and such...The defense attorney of the witness argued about this point. What is interesting is that there was a Defense Attorney named Mr. Lawler. He was the Defense Attorney to the Defendant. Mr. Lawler was looking for an Interpreter and he also called on Nihon Services Corporation. They thought they should accept the job because it was requested of them. So, a person named Yuko Kashiwagi, whom I've mentioned earlier, translated the part requested by Mr. Lawler instead of me in her own way and she submitted it to him.

However, when Mr. Flumenbaum learned about this, he became furious, saying we were very, very immoral, working for both Mr. Lawler and him. He put in a call of protest; however, our thinking was that different individuals had worked on the translations: I worked for the Plaintiff and Ms. Kashiwagi for the Defendant. So we did not perceive a problem.

Then, Mr. Brown made a call to Mr. Flumenbaum although they did not know each other, mentioning that he was a policeman from the Bronx. Mr. Flumenbaum was finally persuaded by Mr. Brown.

Q What was the point of discussion about the word 'purely'?

A I don't remember, but Mr. Lawler tried to declare that the Interpreter completely changed the meaning of the sentence by adding the word 'purely' which didn't appear in Japanese.

At any rate, this was just misinterpretation on the part of Mr. Lawler.

Q Did you work in a room next to Mr. Flumenbaum's?

A I sometimes worked in Mr. Flumenbaum's room and sometimes I worked in another room so that I would have more quiet.

Q Does that mean that you met Mr. Flumenbaum almost everyday?

A I met him when I worked there; when I didn't want to work there, I worked at home.

Q You went over the documents you mentioned earlier, as well?

A I read the documents which were sent from Japan. For example, there were the letters exchanged within the Unification Church, there were lists of members who had come from Japan. I romanized the Japanese language in these lists at the end of my work.

Q I see. Did you ever dine with Mr. Flumenbaum?

A No, I didn't.

Q You didn't? I see. As you said before, translation is very difficult, and very important. Especially in court, language plays a very essential role. In particular, perjury has so much to do with language because what the Defendant says is what is taken up. Therefore, interpretation and translation are central issues here.

Q As for the Oath on July 9, you mentioned that the Interpreter had expressed his wish, as a Japanese, that he wanted the witness to speak the truth.

A I think that was his intention.

Q Does that mean, outside his position as an Interpreter, he he wished this?

A Well, not exactly, but I think the Interpreter was feeling, not so much as a Japanese, but more lightly, something like I just happen to be your Interpreter this time, and I hope you will express the truth.

Q Mr. Sasagawa, here I would just like to confirm a point. We saw earlier, where the Forelady asked, "Do you solemnly swear...?" And Mr. Mochizuki interpreted this as follows: "Regarding this case, at this place, we think we would like to have you kindly convey only the truth," (in Japanese).

A My translation submitted to Flumenbaum was quite similar, I think.

Q Is that right.

A Yes, well I translated all dialogue in Japanese and gave it to him, so.

Q Yes, "Itte moraitai" in Japanese, is translated as "We would like to have you kindly convey..."

A I think that's correct.

Q And your report submitted to Mr. Flumenbaum, how many pages were there?

A I don't remember exactly.

Q Anyway, it was a great number of pages and you turned in all of them.

A Yes, I did.

Q Do you have a copy of your report?

A I could have made a copy, but I didn't think of it then.

Q Did you give the pages all to him?

A Yes, I did.

Q And does the Prosecutor have them?

A Yes, he should have them.

Q Is it possible that he had the transcript typed up with a word processor?

A Yes, and after that, I just remembered. The Japanese customs law at that time, regulating the amount of money you could take out of the country, checking the purpose of your trip and so on; What do you call that in Japanese? I translated quite a lot of that material also.

Q Oh, you mean the translation of laws about customs, and foreign currency to be taken out of the country?

A I had to find the translation of laws concerning foreign currency, and how much money could be taken out of the country, and also, I had to accurately translate things such as the standard for a certain year. There was an English version published by the Ministry of Foreign Affairs but it wasn't such a good one.

Q I see.

A Apart from this, I think there were three or four more papers I translated, because I saw the documents that the secretary, not the assistant of Mr. Flumenbaum, typed into the word processor. I think it was a document, not a dialogue, although I don't quite remember. Anyway, the things which we were doing there were mainly examining the exchanges held in the Grand Jury, but also at the same time, there were several other things such as the correspondence among the Unification Church members.

Q You mentioned before that you were working on this for several months. Does the Prosecutor have the result of your work?

A I think so.

Q Will Mr. Flumenbaum certainly have kept them somewhere?

A I think so. I'm not positive, though.

Q Are you saying that it doesn't matter because it is only a formality?

A No, I don't know about that, but what shall I say, either way, the answer is a Yes, or a No. It could be a mistranslation to translate it as "I would like you to kindly convey only the truth."

Q Well...this translation, "I think I would like you to convey.." this is a translation of "Do you swear, do you swear to tell only the truth?" And it's the job of an Interpreter to translate what is said...

A That's right. But as I said earlier, this Mr. Mochizuki probably did not have any notes with him.

Q Well, I understand that, but it would not be an Oath if... if one is told, "I would like you to kindly convey only the truth."

A Yes, that's right.

Q In Japan, the witness reads everything out loud, and then he swears upon his conscience that he will only tell the truth, before everyone, standing up.

A That's right. In Japan, you swear on your own conscience, but in the States it is a Christian country. Thus words like "So help you God" actually mean, "That is correct."

Q Apart from "So help you God," what is important here is the question asking, "Do you swear?" This is in interrogative form.

A Yes, that's right.

Q The problem is whether he said, "Yes" or "Yes, I do," or not.

A Yes, if you refer to it precisely.

Q The problem is that this is not found anywhere.

A Yes, that's a point also.

Q Also, the witness said "Hai" to the question, "I would like you to kindly convey..."

A That's right.

Q Further, the translator translated this as "Yes."

A That's right.

Q Therefore, to those who only understand English, it will mean that Mr. Kamiyama answered Yes, to the question, "Do you solemnly swear...?"

A You may be right.

Q As a result, it appears here that the English oath is completely different from what the witness actually understood.

A Because he said, "I would like you to convey the truth."

Q Yes, yes.

A Well, the meaning of the Oath (translated) is off the mark, possibly.

Q But normally, we sai "Hai" (Yes) when we are asked something like, "I would like you to kindly convey the truth."

A Yes.

Q We say "Yes", (Hai) meaning, "I understand your wish."

A But the problem here again is that Mr. Kamiyama sometimes answered "Yes" or "No" without waiting for the Interpreter. So that means that there is a possibility that Mr. Kamiyama understood English to some extent without the help of an Interpreter.

Q Yes.

A Because Mr. Kamiyama sometimes answered "Yes" or "No" directly to the question of Mr. Flumenbaum, scenes like that...

Q Were there some?

A Yes, there were.

Q Yes, but we cannot be sure whether Mr. Kamiyama correctly understood the question to which he answered "Yes" or "No."

A Yes, that's true.

Q And also, on the record of the Oath given on July 9, it is said that the witness was "duly sworn in." From this, we can conclude that the witness definitely answered "Yes" to the question, "Do you...?"

A Right. That can be true, but also it can be said that Mr. Kamiyama may have understood English and the Interpreter's translation was only to confirm the meaning of the question.

Q What do you mean?

A The answer "Hai" which Mr. Kamiyama gave...

Q Yes,....

A There appears a possibility that Mr. Kamiyama replied

"Hai" to the translation as well as the English Oath. Why? because Mr. Kamiyama, at times is found answering "Yes, ..." something without the Interpreter.

Q But, it is the Yes of a Japanese, and some Japanese will say Yes where they ought to say No, and vice versa.

A That, has to do with how much English comprehension Mr. Kamiyama has...

Q That, we don't know. Mr. Sasagawa, you haven't personally met Mr. Kamiyama yet, have you?

A That's true. It's just...

Q You haven't spoken with him, have you?

A Well, it's just that such scenes are found in that transcript so I told Flumenbaum about this.

Q What did you tell him?

A That Mr. Kamiyama may understand a little (English). I think there is the possibility that he does.

Q Then, what did the Prosecutor say?

A He didn't say anything.

Q Well, is that so. But, you have not met Mr. Kamiyama, have you?

A No.

Q And you haven't talked in English with him, nor in Japanese. So this is totally based upon your conjecture, right?

A That's right.

Q If we go by the form of this document, there are more and more points (to be discussed.)

A Yes.

Q And following (the Oath) of July 9...

A Yes.

Q The Prosecutor is explaining (the witness' rights). Please read this.

A (Mr. Sasagawa read as follows.)

"And in connection with your appearing before this Grand Jury you are entitled to certain rights. Let me explain to you what these rights are. First, you may refuse to answer any question if a truthful answer to that question would tend to incriminate you personally, in any way, shape or form. Do you understand that?"

... Uhh, this right to refuse, or right to remain silent, is it called?

Q Yes.

A Yes, I think there may have been something like this.

Q That is to say, this is a very major right in American society which permits a person to remain silent about what is disadvantageous to him, and any American will use this right.

A Yes.

Q Concerning this, the Prosecutor is, well, giving a proper explanation. But this translation,... Please look at this.

Mr. Sasagawa read as follows:

A "and...uhh...based on the summons concerning your appearance in court today, there are several rights granted to you. I will have the pleasure of explaining these to you. First, you are able to refuse answers to questions which may cause you to fall into sin. Do we have your kind understanding?"

Q That is the translation.

A Yes, well, this translation cannot be said to be wrong as it is, also.

Q No, not wrong, but first of all, what this right says is that you can refuse to say things that may incriminate you.

A Yes, that's right.

Q Incriminate means, in short, to receive punishment, to receive penalty.

A Yes.

Q The word 'crime' is extremely...to a large part...

A It is very difficult.

Q In other words, you do not have to make a reply for which you may be penalized. This is quite different from causing to fall into sin, but you could still answer, "Yes, I understand" to this question. In the transcript, it says, "Yes, I do." for the question, "Do you understand that?"

A Yes.

Q Thus, on the transcript, everything is very neat and orderly, but in reality... If you look at both Japanese and English, I think it can be said that there are extremely big problems.

A You could say that, I believe.

Q And, if we go through this all, it will take a great amount of time, but I'd like to refer to the part about perjury. And furthermore,... (read the English corresponding to translation:)

"What you will kindly say at the Grand Jury (hearing) today, well...may have a chance to be used against your interest ... and uh... the possibility exists ... legal.. uh.. in the future procedures from now on, continuous and among them, uh.. used especially disadvantageous to you.

A "You should be aware, that anything you do say in front of this Grand Jury can be used against you. Not only by this Grand Jury, but in any court proceeding. Do you understand?" Well, this translation is not so accurate either.

Q If you translate the Japanese of the Interpreter into English, he says "There is a possibility that it will not be good for you." This is a very weak expression, that one may be put at a disadvantage.

And then this witness says, Mr. Kamiyama asks at this time, "What did he say?"

A Yes, that's right.

Q You see, I can't quite understand this. Just listening to this Japanese, "It might not be good for you," or"It might be to your disadvantage," is extremely weak. And the phrase, "to make a statement" can mean both, something you will say, or the (legal) declaration under oath. This is not clear, either. And what about this Japanese? If translated, I think this would turn out to be the kind of English written here at the bottom, but what do you think?

A Yes, well, this is very difficult.

Q The witness here asked, "What did he say?", right?

A Yes.

Q As the translation for this, the Interpreter says, "He wants repetition."

A Yes, this isn't very...if it were a true testimony, he should have translated this as "What did you say?" or something like that.

Q Yes, that's right.

A Well, the position of the Interpreter, around here as well, is a bit ambiguous.

Q You have also written in your letter, but the Interpreter adds his own explanation or rephrases words...

A Yes, his position. Instead of translating accurately and consistently, he sometimes takes Mr. Kamiyama's standpoint, and other times, the Prosecutor's, making himself very vague.

Q That's right. The function of an Interpreter, he should be accurate primarily.

A That's right.

Q He won't make an Interpreter, if he adds his own interpretation for us.

A You could say that.

Q This would cause extreme trouble.

A Yes, you could say that.

Q And well, this is the way (the record) continues.

A. Yes.

Q You may not be able to trace back your memory just now, but in the report that you submitted to the Prosecutor, Mr. Sasagawa, I think you must have pointed out all of these things in a similar vein.

A Yes, I did write out the Japanese from beginning to end and did the (translation) job so that should be included also.

Q Is that so. And concerning the warning of perjury, do you remember anything?

A Umm, no, I don't. Not clearly.

Q Is that so.

A Yes.

Q Whether you read or didn't read something about that, or whether something concerning it was not found in the records at all, what is your opinion?

A Well,..oh, come to think about it. The subject of perjury came up in the beginning, didn't it. Where the Prosecutor gives a warning toward Mr. Kamiyama...For instance, about calling that perjury, well, uhh, the Interpreter forgot the word, and said things like, false words and what not.

Q Oh, do you remember about that?

A Yes, the Interpreter got stuck, forgetting the word, 'perjury'.

Q You do remember"

A Yes.

Q You still remember it up to now?

A Yes, it was the word 'perjury'.

Q Did you tell this to Mr. Flumenbaum?

A Although I didn't tell him, I wrote it in my report, and I think he should know about it.

Q So, it was that the Interpreter couldn't remember the word 'perjury'...

A The word slipped his mind or something.

Q I see, and what you just referred to, is in this record, page 23, of July 9.

A Page 23?

Q Yes, here on page 23. The Prosecutor(says)...

A Ah, this is it. (Reads the English: "Finally, Mr. Kamiyama, if you should give a false answer or fail to testify completely and truthfully in response to the question that I ask you, you could be charged with a separate criminal violation for perjury or obstruction of justice. Do you understand that?")

Q Do you recall this part?

A Yes, there was a part like this. (Reads Interpreter's translation, retranslated into English.) 'Fraudulent replies,'..well, he forgot the word 'perjury' so that's why he has to say something like this.

Q It's as follows: (Re-translation) "If you should give fraudulent answers or neglect to testify, there is the possibility that you will be blamed..."

A Yes, this can't be called 100% accurate.

Q Isn't it actually 100% inaccurate? Which means, he is not allowed to give false answers or to neglect to testify; then, what good would his right to remain silent be, right?

A You could interpret it that way.

Q So then the witness asked, "That means not the tax laws, but.." Here too, he is actually asking what it is(he could be charged with), not the tax laws, but what? The Interpreter translated this as, "Does that mean that on top of, or apart from the tax laws?" But the Prosecutor who did not know about this (the real question) replied, "That's correct, if you should testify falsely...." This indicates that the Prosecutor (mistakenly) thought that his statement about perjury was already understood (by the witness); that the witness could be punished for perjury besides (the violation of) tax laws. This is why he answered, "That's correct," you see.

A Yes, that is so.

Q Something like this is one misunderstanding piled on top of another.

A Well, you could say that.

Q The Interpreter was at a loss, and could only say, "Uhh..." The way that things developed, well, the Prosecutor rushed one step ahead on his own, while the Interpreter could not translate accurately.

A Well, you could say that.

Q But the witness still wasn't clear about the situation, so he asked again, "That means...?" The Interpreter then comes out with, "[If] the testimony...the testimony...is distorted..."

A Well, I think Mr. Lawler was waiting in the hallway, so I think he should have adequately advised Mr. Kamiyama on that.

Q But, this, we don't know, right?

A Yes, but there was one time that Mr. Kamiyama left his seat, saying, he would like to consult his lawyer for a while...

Q Yes, there was.

A That passage is in the records. His attorney must have been standing by outside, so I think he should have had enough advice on that point.

Q Yes, but in this scene, the attorney is outside, the judge is not present, it is only the Prosecutor, as it is a Grand Jury hearing. It is an investigation being held under the extremely one-sided lead of the Prosecutor, isn't it?

A Investigation, well, the Prosecutor was the examiner. As to his questions, um, what do you call it, leading questions? I don't think that happened. The Prosecutor's questions were all clear.

Q According to your recollection now.

A I don't think there was anything like leading questions.

Q Hmm, and further, please, if you would read on, on page 28, the witness asks, "Meaning...I'll be charged with...perjury?"

A Yes, I see.

Q Yes, but at this moment, the Interpreter, hearing the words, "charged with perjury?" could not translate this again.

A Here he forgot the word. It slipped his mind and he couldn't come out with the right word.

Q Yes. So, as a result, the meaning doesn't come through at all. "...all right, fraudulent answers, or fraudulent, well, negligence of...uhh, testimony, or..." This doesn't make sense as English, nor as Japanese.

A Which (passage) is that?

Q The words of this Interpreter.

A Where is that?

Q Where this Interpreter says, "Does that mean once again that..?" on page 28.

A (Reads in English:) "Does that mean once again that I shall be charged for..unn..trying to find the right word...unn, all right, fraudulent answers, or fraudulent, well, negligence of ...uhh, testimony, or..." Yes, I see, he, um, the Interpreter forgot, (laugh) the word 'perjury'. Well, and, yes, he forgot the word 'perjury'. (laugh)

Q Yes, and furthermore, the Prosecutor explains again, you see.

A Yes.

Q (Reads in English:) "If you should knowingly and willfully give a false answer to the Grand Jury, that is a separate crime." And the Interpreter again makes a translation that's not so...

Q He again adds unnecessary things. "Knowingly" is all right, the "uh"s and "ah"s can't be helped, and "...giving a false answer or distorting the testimony would be equal to sin." This too, isn't a 100% good translation.

Q This, I don't think can be understood as Japanese either.

A Well, you could say that, but this is a difficult part, too.

Q Hmm.

A Well at any rate, I should have written about all of these things.

Q Ahh.

A I think I told Flumenbaum.

Q Then, Mr. Flumenbaum knew that this was the extent to which (the witness) had been informed of the penalty for perjury, of course.

A I think he must have known. If he had read it carefully.

Q It should be included in the report, shouldn't it. Hmm, I see. And then, the right against self-incrimination. Within the Fifth Amendment to the Constitution, there is a passage that "no one has to make a statement against his own interest", but do you remember anything about its announcement (to the witness)?

A Well, about that I don't remember, but if I see it, I would be able to recall that there was such a passage.

Q I see, then, for example, page 45 here. In the very beginning, the Prosecutor tells Mr. Kamiyama about the Constitution... You have good pronunciation, so please read this, Mr. Sasagawa.

A (Reads in English:) "At any time, Mr. Kamiyama, that I ask you a question and you want to invoke your Fifth Amendment Privileges, please feel free to do so, if you like."

Q And the Japanese that the Interpreter translated this into is:

"And when I am asking you a question, well..uh..you are protected by the revised item of the fifth article, and therefore it is your right to use it."

A Well, it is tough.

Q In brief, "the revised item" and so on, can't be understood as Japanese.

A Yes. But here too, the problem becomes how much Mr. Kamiyama understood in listening to this English.

Q But the fact that the Interpreter is with him, is for the Japanese, and if he understood the Prosecutor's words, he wouldn't need an Interpreter.

A Well, the big problem here becomes how much knowledge of English Mr. Kamiyama had.

Q Then, if it becomes a problem of how much Mr. Kamiyama understood what the Prosecutor said, regardless of the Interpreter, that would mean in other words, that one would run into great trouble if one can't speak English.

A Well, I wonder about that, too. In the case of Mr. Kamiyama, however, he has an attorney.

Q In this case, I think it would have been all right had the attorney been beside him, but he was outside, in fact. He did not know what was going on inside.

A But at any rate, prior to the time of his appearance in court, about this Fifth Amendment, he should have already heard about this.

Q Well, an American citizen would know about this.

A If Mr. Kamiyama had not known about things like this, then that would be negligence on the part of Mr. Lawler.

Q Hmm, the attorney. An American would know about this as common knowledge.

A Well, I think so.

Q So, that would mean that those who don't know about things like this would run into terrible disaster if they went to America taking it easy.

A Well, but I think if an attorney were hired, the person would have definitely been informed about this. And, I don't know to what extent Mr. Kamiyama knew about this.

Q If Mr. Kamiyama had not known about it, or if Mr. Kamiyama did not have the ability to use English...

A If he had not known about it, wouldn't it be negligence on the part of his attorney, Mr. Lawler?

Q But even then, if the Interpreter had translated properly...

A Yes, if Mr. Lawler had neglected to explain his rights to him, while the Interpreter hadn't translated accurately, this is, what can I say, a terrible misfortune. That is serious. But if Mr. Lawler had stated these things and Mr. Kamiyama had known about the Fifth Amendment, well even if the Interpreter were not 100% accurate, I don't know what it's called, the right to remain silent, but (Mr. Kamiyama) should have known that this was being referred to, in my opinion.

Q Well, that is your conjecture.

A Yes, and there was something about the Fifth article.

Q But it would be impossible to understand a translation like, "..that revised item of the Fifth article.."

A Well, we would have to ask Mr. Kamiyama to find out.

Q But, things like this should be communicated properly; you see, for example in America, telling a person about his right to remain silent, this must be announced no matter how many criminal records he has, or otherwise, it would be against due process. You can't say, because you have been convicted ten times in the past, you ought to know about this. That, I think is due process. You said in that sense, Mr. Kamiyama was unfortunate...

A Yes, whether Mr. Kamiyama had known or had not known, we have to ask him to find out.

Q Well, that if you didn't know, it would be unfortunate...

A Well, I would think so. It would be the negligence of the attorney. Mr. Lawler, is it?

Q And after this example, going through the record, as you have already pointed out I believe, inappropriate translations are very obvious.

A Yes. But if another Interpreter had done the job, it is a question how much better he would have been than Mr. Mochizuki. My impression is that Mr. Mochizuki interpreted without taking notes. But that I can't say for certain because there isn't a video of the Grand Jury hearing. It is possible that he had been using notes to do his job.

Q Well, a court interpreter is an extremely difficult job. There are various legal, technical terms.

A I agree that it is very difficult.

Q So I believe at least, that court interpreters should receive enough training for the occupation, and should be very competent.

A Besides, I think Mr. Mochizuki's attitude is quite easy-going. He was a little too relaxed; he should have been more alert and thorough. A little more faithful to the spoken words. He does have the capability. In fact, when I first heard his interpreting, his pronunciation was accurate so that I wondered if he were a nisei, and could tell he was a competent interpreter. But I think he was a little too relaxed.

Q In short, he made 'rounded' translations, as in cutting corners..

A It does seem a bit 'out of shape' or disintegrating. But, you can get the general meaning of it.

Q But, no work of literature would be literature if it were translated in its general meaning only, for example.

A In translation compared with interpreting, you can always work on the former and produce something good, but in the case of interpreting, it is a one-time-only. No matter how competent a person, if he is restricted by time and something slips his mind, like the word perjury, earlier, that happens. Well, I don't think you can criticize the Interpreter.

Q Well, so, as you were saying, is it that he is doing well as a simultaneous interpreter?

A It's not simultaneous interpreting, I think.

Q Didn't you make reference to something like that somewhere?

A I don't remember that.

Q Somewhere. Translations, you can take time out to look them over and look up the dictionary, but in the case of a sudden interpreting situation as this, didn't you say something to the effect that the work was well done?

A I don't think I said something like that.

Q So.. at any rate, as a law expert, I also think it is not desirable to have general interpretations.

A Yes, that's right.

Q Especially concerning due process. This is a very important idea. Translation is admittedly difficult, but.
When you testified before the Grand Jury the first time, were you shown Mr. Kamiyama's indictment papers?

A Uhh, no, I don't think I saw them. I don't know.

Q You don't remember?

A No, I don't.

Q And were you ever shown or given a copy of a supplementary indictment or an indictment concerning Mr. Moon, or any other indictments?

A I don't think so, Perhaps I have.

Q You have no clear recollection?

A No.

Q Did you ever talk with the Prosecutor about changing the indictment or the like?

A No, I haven't. The Prosecutor carried things out at his own pace.

A But, with other prosecutors, with Flumenbaum's colleagues, I did have chats about what was the problem at certain points and so on, but with Flumenbaum, I never talked about unnecessary matters. With his colleague, I did.

Q Who was his colleague?

A I forget his name, but he is one of the prosecutors.

Q His friend.

A I had light chats.

Q There were such occasions? And about this part you mentioned earlier. Do you remember explaining to the Grand Jury the phrases about 'carrying a checkbook' or 'being in charge' or 'managing' one?

A That, without explaining, I remember telling Flumembaum about it in detail. For instance, what the word 'to be in charge' of means in Japanese, or 'keep'; these things I wrote out in detail in a report and handed it in to him.

Q So you recall why these things became a problem?

A Why a problem, for instance, when something is 'kept' is it held close to one's reach, or kept at home, or something like that created a problem, I think. I don't recall whether I heard that later or at that time.
Anyway, the word 'keep' and its corresponding 'hokan' was a problem I remember. And so was 'purely.'

Q They were elements of the perjury charge? In other words, whether the check account was 'kept' or something? This passage appeared somewhere, and that is the content of a perjury charge.

A I remember hearing about it. What exactly was the problem, I asked him once, what exactly was the perjury charge.

Q That is Count 10. It's talking about whether Mr. Moon was carrying the checkbook or not. He answers, I was managing it.

A Mr. Kamiyama said he was 'keeping' it.

Q Ah, 'keeping' it.

A And here the Interpreter adds something unnecessary, 'from the beginning,'. These are the points that can be called Mr. Mochizuki's shortcomings. Because all he said was 'I was keeping it,' and does not say 'from the beginning' or at least it's not certain whether that's recorded on tape; then the Interpreter shouldn't say anything beyond that.

Q And in that connection, this Interpreter says something completely chaotic where I read, concerning this Fund:

A (Mr. Sasagawa reads)
"Was any of the money in the Family Fund ever used to pay expenses for the Japanese members who had come to America?"

Q And the Interpreter translated this as, "Have you ever used the money in the Family Fund as expenses for the Japanese members to come to America... for airplanes and expenses to stay here?"

A Well, the Prosecutor just said expenses, so it doesn't mean transportation costs.

Q Besides, the Prosecutor clearly said, "members who had come to America."

A The Interpreter says something unnecessary; he says, "for airplanes," which has nothing to do with the question here. This is an obvious mistranslation of the Interpreter.

Q He added details himself.

A He added his own interpretation. I wrote these things out and turned it in to Mr. Flumenbaum; I also remember explaining it to him orally. I told him clearly that the Interpreter added unnecessary things here.

Q So, the "Japanese members who had come to America: indicates that the money does not refer to expenses to come to America.

A It means the expenses needed while they are in America.

Q Yes, the expenses for the Japanese members who were already in America.

A Yes, and he added words like "airplanes" to it.

Q In addition, Mr. Kamiyama didn't understand this, so he asked again, "...for them to come to America."

A Yes, and here again, the Interpreter confirms, "Yes," which is unnecessary.

Q I think it's truly misleading. Then it's quite natural that Mr. Kamiyama answered, "No, I didn't."

A As to this point, I clearly told Mr. Flumenbaum that it was a mistranslation. I clearly remember that I informed him of this. In my report, I stated that the Interpreter did not translate these parts accurately. I remember telling him orally, too.

Q I see, but... This... is included in the indictment, isn't it?

A That, I don't know.

Q So, Mr. Flumenbaum should certainly know about this if he has read this report.

A If he has read it, yes.

Q Do you remember the passage, "...the problem of the translation of 'carried' and 'to be in charge of...'"?

A Which passage?

Q Yes, the passages, 'carried' and 'in charge of'.

A I wrote the difference of these phrases precisely in the report and I gave it to him.

Q So, that means you do remember that there was a translation problem concerning 'carried' and 'in charge of'.

A As for 'carried', it means that a person possessed something all the time with him. But, as for 'in charge of', it means a person can be in charge of something somewhere at home or at some other places. I wrote it precisely in the report and gave it to him.

Q Then, how about the difference between 'paid for' and 'bought'. So you remember testifying at the Grand Jury about the difference 'paid for' and 'bought'?

A Well, I didn't go in to it so deeply, but I do remember writing it in the report and handing it in. If you once answer "yes" in a testimony when you are asked, "Have you done these things?", it will include these matters also.

Q So, you don't remember it exactly now. Mr. Sasagawa, do you think that Mr. Mochizuki did a 'credible' job as an simultaneous interpreter at the Grand Jury's testimony on December 15, 1981.

A But this is not simultaneous interpretation. It is only consecutive.

Q Well then. Do you remember testifying on the matter of this sort?

A I don't think I mentioned anything about the qualification of an interpreter.

Q If you don't remember, please say so.

A I don't quite remember, but I don't think I did. Except, well I met him several times a day, so....

Q You mean Mr. Mochizuki?

A No. Flumenbaum. I've never met Mr. Mochizuki, so. But I told him several times my personal impression and comments like, this part and this part are mistranslated, but this part and this part are reliable on the whole, and so on.

Q And do you remember testifying at the Grand Jury that he did a credible job?

A I don't remember...testifying, but I did tell Flumenbaum many times about my impression.

Q What kind of impression.

A I mentioned things like this part and this part are sloppy, this part is carelessly or loosely translated, or he is adding unnecessary words.

Q And do you think of it as a simultaneous translation?

A This? This is all consecutive interpretation.

Q Then, I'll ask you again, but after examining the work of Mr. Mochizuki, do you (Mr. Sasagawa) think that his job was very credible?

A He is a very competent interpreter, but regarding this job, he seems to be too relaxed.

Q What do you mean?

A The only problem is that he sometimes translated in a loose and tedious manner, adds unnecessary things and his own interpretations.

Q I see. And also, do you remember testifying at the Grand Jury hearing on February and March of 1982 saying, "He did a very credible job?"

A I don't remember.

Q Do you remember appearing before the Grand Jury on February or March of 1982?

Q You do remember testifying perhaps two times. Then during those two times, do you remember testifying to the effect that he did a very credible job as a simultaneous translation?

A I'm not sure about that. It will become clear if you check.

Q Your dissatisfaction towards the interpreter was that, as you expressed his translation was "loose and tedious, and too relaxed." Is it likely that you testified saying "He did a very credible job", or not. Is that possibility high or low? What do you think?

A Well, there is a possibility that I said "Yes, that's right" about the details I explained in other contexts, taking them as a whole, speaking generally; but when I look at the material here before me, I can remember that this was the way it was because of the record. But right now I don't have that record, or you say it's not here, so I can't say anything. I would rather say, I don't remember, than say something funny. My memory does gradually come back, while looking at a record like this.

Q Well, at any rate, you checked all the translation by working on it for several months. But I think this English transcript is very dangerous because it gives other people mistaken impressions. You can read it through so smoothly.

A Yes, well, I have already told Mr. Flumenbaum about the various problems in translation. But I don't know to what extent Mr. Flumenbaum explained them to the Grand Jury.

Q I see. Well, then, that means if Mr. Flumenbaum had called the attention and memory of the Grand Jury to this matter more, then the interpretation of this perjury might have been more different...

A That's right.

Q Why do you think Mr. Flumenbaum especially did not convey this?

A Convey what?

Q Your (Mr. Sasagawa's) comments,to this Grand Jury?

A To the Grand Jury? He might have conveyed them or might not have.

Q If not, why do you think he didn't?

A If he didn't convey them,...I don't know. It's hard to say. I advised a lot of things to him concerning this case. For example, Mr. Kamiyama once left his seat to go to the toilet. And later on, he left his seat again saying he wanted to have a cigarette. I think at that time I told him (Flumenbaum) that Mr. Kamiyama might not be a smoker. Anyway, I wrote down everything I noticed as my comment. I don't know what Mr. Flumenbaum did with this report after reading it. Whether he threw it away, or showed it to someone, I don't know.

Q But,wasn't the report typed?

A Yes. He said he would ask his secretary to type it.

Q And, if he did have it typed...

A Yes, the record should be somewhere.

Q But, what kind of a person is Mr. Flumenbaum? Did he have a strong belief or something of that nature that somehow he must prosecute this case?

A [illegible] he seemed as though he was confident that Mr. Kaniyama had committed perjury. When I was talking with other.. what shall I say, colleagues of Mr. Flumenbaum, they were saying this, (that) he firmly believed that.

Q Hmm, but comparing the transcript and the tapes, there are

~~some places~~ I cannot explain. One is, it's written in the transcript...That..Mr. Kamiyama has already taken an oath at the beginning, and his examination will start, it says. But here on the same transcript, it says, "Let the record reflect that...I am going to press the button to start the tape recorder..." and then, "Please call the witness in." Then, the administration of the Oath is not recorded on the tape at all.

A Uh, what do you mean...?

Q In other words, (on the transcript, the Prosecutor) says that he will start the tape recording. So, the tape must be moving. And then, it says, please call the witness in. But from that point on, nothing is recorded. The next voice recorded on the tape says, "Mr. Kamiyama, please speak more loudly."

A Yes, there was a part like that.

Q So, I don't know whether the Oath was administered there or not, but nothing is recorded on the tape.

A I see.

Q But according to the transcript, it is stated that Mr. Kamiyama was already sworn in. It is written that the witness was "duly sworn in."

A I see.

Q So, what is taking place on the tape does not correspond to what is recorded on the transcript.

A Yes. Well, one doesn't know because one wasn't there at that place.

Q Didn't you notice that while you were checking this before?

A Well, I don't think there were any missing parts. I don't remember finding any part that seemed to be omitted on the transcript, but recorded on the tape.

Q You didn't notice any?

A If I had noticed it, I think I would have told him. It may be written in the report, but I'm not sure.

Q You don't remember?

A No.

Q Were you ever told by the Prosecutor to pay close attention to the opening part of the Oath?

A No, he never said that.

Q Only the contents. So...let's see, is there anything else I should ask you...? So you have read this statement and the letter through and have signed it, right? You approved of the contents before signing it?

A Yes. But I'm not quite sure whether it was once or twice that I appeared before the court.

Q And, as to what you said there, there are no mistakes?

A No.

Q Did you, Mr. Sasagawa, receive any comments from Mr. Flumenbaum concerning Mr. Mochizuki's translation?

A Yes, he did ask whether the Interpreter was alright. He asked me something like, "How about this Interpreter? He's alright, isn't he?"

Q Was the Prosecutor himself a bit uncertain?

A Not exactly uncertain, but I think he just wanted to make sure. He was asking in a way like, "Wasn't this Interpreter alright?"

Q Why do you think Mr. Mochizuki was chosen as the Interpreter?

A Isn't it because he had permanent residency in the States? A Green Card, I mean. He has an American Green Card and I suppose he has some kind of a connection with the State Department.

Q So, is it through connections that these appointments are made?

A I think so.

Q Do you think the Prosecutor selected him?

A I wonder, I don't know.

Q How much explanation about the background and the problems related to this case did you receive?

A I didn't get any explanation at all?

Q None at all. But I myself raised that question sometimes to him. What exactly is happening here? Or something to that extent.

Q From 1981 to 1982 when you gave your testimony up till today, was there any occasion in which your evaluation of the Interpreter changed?

A Do you mean the evaluation of Mr. Mochizuki?

Q Yes.

A It's been the same. Although he was capable as an Interpreter, he added superfluous words or omitted words, although omissions can't be helped, it's not that he wanted to make them. But to add unnecessary things by his own interpretation, this, he should not have done. My concern is whether he interpreted, taking notes or not. If he took notes I could say that he did his best. However, if he did not take any notes at all, that was a shortcoming on his part.

Q I want to ask you again. Didn't you express at one time that Mr. Mochizuki appeared to have done a very credible job as a simultaneous translator?

A In the United States?

Q Yes.

A Maybe I did.

Q If you did, what was the reason?

A Well, partially, perhaps because he was doing a relatively accurate job. If I did say so, I think it was in that sense. However, this interpretation was not simultaneous. So, there is no apparent reason that I would have to make such an evaluation. It's hard to say.

Q Well, perhaps you didn't like to speak ill of the Interpreter because he is also a Japanese?

A No, I don't think so; I don't mind criticizing others.

Q You wanted to say that small mistakes cannot be helped because simultaneous translation is a very rapid job?

A Yes, if it were simultaneous interpreting, it can't be helped that there were some awkward parts.

Q Well, the meaning has to be conveyed at the same time the speaker finishes, so it can't be helped.

A But, this isn't simultaneous translation or anything. There's no reason to use that expression.

Q So, there was no reason.

A None, and I don't think it was used.

Q Is that so?

A I'm not certain.

Q I suppose we'll have to read your Grand Jury testimony.

A Yes, if that were available, it would be clear.

Q Is there anything else? Oh, yes, concerning the Oath, have you ever indicated the difference between the official Oath and the abbreviated one (used for Mr. Kamiyama) to Mr. Flumenbaum?

A I was writing out all of the Japanese and translating it directly, so Flumenbaum should have known, if he had studied it.

Q And the word, 'swear' was not in (the translation)?

A The word 'swear' never appeared in Mr. Mochizuki's translation of the English Oath.

Q How about 'to take an oath' (chikau)?

A The word meaning 'to take an oath' was not there.

Q Flumenbaum did know that the regular Oath administered in American courts was not used, didn't he?

A Flumenbaum should have known that. But take for instance this translation - "So help you God" translated as "May God help you" is a mistake. I don't think that's what it means. "Respectfully swear" for "solemnly swear" is awkward also.

Q How would you translate it, Mr. Sasagawa?

A Well, if I were to do it reading this, there would be many possibilities, but if I were put on the spot, it would probably be something like "Do you swear to state the truth?" Of course if I did it several times, the set phrase would come immediately. But "May God help you" doesn't make any sense in Japanese, and I think it is certain that that is not what it means.

Q This is to confirm a point, you mentioned that parts of the translation could be "problematic if taken up by themselves."

A Yes, like that part about the airplane and so on.

Q Yes, what did you mean by that?

A Well, in any case this Interpreter translates with roundabout expressions adding on his own unnecessary interpretations, making errors in translation, and because of this, Mr. Flumenbaum's questions go around in circles many times. Listening to the tapes, I felt frustrated several times. I did tell Flumenbaum about this. To what extent Mr. Kamiyama knew English, whether he understood but pretended not to understand, or really did not understand and was confused by the Interpreter, this we can only find out from he himself.

This Interpreter has the ability, but I think he didn't do as much as he could, well, he was a little too relaxed. I could testify to this fact. I don't know about Mr. Kamiyama, but as regards the performance of this Interpreter, I can definitely say that it was not his best.

Q Had the Interpreter been a little more competent...

A Well, this man is capable, but I wish he would have done a better job.

Q If he had done a good job, such a problem would not have occurred.

A Well, that would have been up to the Grand Jury, but if he had [illegible] better job...that is a great regret. About that, [illegible] that the Interpreter's job was not the best possible [illegible] to the States and testify to, certainly.

[illegible] the Prosecutor, while hearing your various opinions, Mr. Sasagawa, still went ahead with the prosecution...

A Yes, I wrote many things in the report but I don't know whether he ignored, studied, showed to others or did what with it; however, I can testify that I wrote out a detailed report with comments and did the translations, and submitted it to the Prosecutor.

Q Well, Mr. Sasagawa, thank you for taking so much time out today. As to what you have told us today, you did tell us the truth?

A Yes, as far as I know, everything is the truth.

Q Then, will you please swear that it is the truth?

A Yes.

Q I am sorry to put you to trouble, but will you please say what you have also written in your letter and statement, that you swear that your statements are true, and if so, will you kindly say that out loud?

A Concerning this content?

Q Yes, what we have recorded on tape today.

A All right. I swear that the conversation held up to this time is true as far as I remember.

Q Thank you very much.

* * *

I swear that the foregoing questions and answers which I reviewed here are true and correct to the best of my knowledge as long as they conform to the tapes, without compulsion from anyone.

September 12, 1984
Tokyo Japan

9/12/84
Eisuke Sasagawa

EXHIBIT M

IN THE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

SUN MYUNG MOON and
TAKERU KAMIYAMA,
Defendants

BRIEF OF AMICUS CURIAE

Kinko S. Sato
Attorney-at-Law
2-3-5 Eifukucho
Suginami-ku, Tokyo
Japan
(03) 322-1888

ON THE GRAND JURY INVESTIGATION OF MR. KAMIYAMA'S CONDUCT IN CONNECTION WITH SUSPECTED VIOLATION OF TAX LAWS

Japan and the United States are neighboring nations separated by the great Pacific Ocean from each other. In spite of this distance, these two nations have greatly strengthened their mutual ties over the years.

They maintain close political, economic, and social relations. However, in spite of the fact that these two nations are free, democratic, highly industrialized, and wealthy societies, i.e., in spite of these obvious similarities, they have had distinctively different historical pasts, giving rise to two sets of behavioral patterns, as well as two sets of emotions toward what constitutes justice. Separating these two nations, therefore, is not only the Pacific Ocean, but also the socio-cultural peculiarities such as linguistic difference, which separates them apart sometimes even more than the ocean. Particularly in the historical respect, needless to say, the system and procedures governing criminal trials are also differently developed in accordance with each nation's particular history, social customs, politics, economy, and culture, and as such they bear the marks of the country in which they evolved. Thus, we have today two significantly different trial systems in Japan and the United States. In fact, the comparison of the two will show a contrasting difference as to the underlying principles and the prevailing structures.

This case involving Mr. Kamiyama is one salient example of such difference.

Mr. Kamiyama was subjected to a Grand Jury investigation which lasted for three days on July 9th, 16th, and 21st of 1981. This very investigation was the beginning in retrospect of the proceedings of this case.

Upon examining Mr. Kamiyama's testimony made before the Grand Jury, we have encountered an astonishing state of affairs. The pathetic lack of interpreting ability and the dreadful incompetence of the interpreter who was selected and appointed by the State on behalf of Mr. Kamiyama have produced a communication gap between Mr. Kamiyama's testimony and the prosecutor's response as well as between the prosecutor's questions and Mr. Kamiyama's answers, the process of which can only be adequately described as a "tragic comedy."

It is something too far beyond being merely an "inaccurate" or "inappropriate" interpretation, and the Japanese spoken by this interpreter is in fact often found to be incomprehensible. However, it is with serious regret to note that neither the prosecution nor the court, nor especially the members of the Grand Jury, without any Japanese language facility, took timely notice of this irregular state of affairs caused by the malperformance of the court-appointed interpreter.

Even though Mr. Kamiyama has from time to time responded by saying "Yes" or "Wakarimashita" (understood), this often does not mean that he understood the meaning of what he was told. In fact, it is a widely recognized fact that there are many occasions in which this expression is used among the Japanese, or for that matter among Orientals, as a mere expression of courtesy, deference, and decorum when talking to a man of higher social status or superior authority.

Even though it is obviously possible to single out a large number of specific instances of extremely poor performance both in linguistic interpretation and in the use of proper Japanese words, idioms, and expressions, what is especially important here is the fact that the testimony given and the proceedings instituted through such an incompetent interpreter did not constitute a fair trial for Mr. Kamiyama. Indeed, it was nothing but an outright denial of a fair trial to a citizen. Moreover, this should not be taken merely as a violation of due process. Beyond a merely technical violation, the tragic fact should be remembered that Mr. Kamiyama has been prosecuted on account of perjury alleged on the basis of this Grand Jury testimony, and is now about to be condemned to a federal prison.

The Japanese language can never be said to be an easy one. It has an intricate system of honorifics, which demands delicate shades of expressional differences depending on who is talking, or is being talked to. The Japanese language is also often said to be a language loaded with situational and emotional expressions. All these characteristics depicted by analysts, however, do not at all mean it is imperfect as a verbal means of expressing one's message. On the contrary, Japanese is a language which can provide a fully adequate verbal means with which one can correctly communicate with all others. If, therefore, the interpreter assigned to this case were fully conversant with both the Japanese and the English languages, he should have been able to translate the prosecutor's English into correct and corresponding Japanese, and Mr. Kamiyama's Japanese into correct and corresponding English. The reason why the interpreter was unable to do this was the inadequacy of his linguistic capability both in English and Japanese.

And, because of this inadequate interpreting, both in English and Japanese, the witness has been construed by the court to have committed criminal acts of perjury, and as a result, has been found guilty as we know today. What does this mean? What does all this amount to in the end? Does it mean that in the United States it is a crime not to be able to speak English? If Mr. Kamiyama were able to understand and speak English fluently himself, a fearful tragedy such as this could not have happened in the first place. Does one's lack of English facility constitute a crime in America?

Secondly, it was with a typically Japanese mentality and Japanese emotion that Mr. Kamiyama responded to the investigation by the Grand Jury. Mr. Kamiyama is found to be a typical Japanese with a typically Japanese sense of righteousness and Japanese emotion. Does all this constitute enough reasons why he is, and many more Japanese citizens like him might be, sent to the prison in the United States? Or, does the fact that one happens to be a Japanese constitute a crime in America? How else can we express our deep frustration? What other words can we use to express our silent indignation?

However, we shall prove conclusively that no act of perjury was committed in this case for the simple reason that the incompetence of the interpreter rendered it impossible for Mr. Kamiyama to commit perjury in the first place. To begin with, there was no oath administered in accordance with the law, nor was the witness informed of the legal sanction for perjury. Due to the interpreter's incompetence, the witness was not informed of his rights guaranteed by the Fifth Amendment, which constitutes one of the important elements of what constitute "due process" in the American court trial. What else should be needed, in addition to a hearing without proper oath and without the warning of sanction for crime, to deny a citizen's right to due process? To see a citizen, Mr. Kamiyama in this case, prosecuted on the basis of such Grand Jury testimony, found guilty of perjury, and committed to confinement in federal prison is an inexcusable act of unreasonableness and injustice. First of all, a full investigation should be instituted of the process by which an interpreter of such low competence was singled out for the assignment. We cannot help but profess a profound fear to realize the fact that the present court procedures seem to permit no one to check on the actual competence of the court interpreters. This is nothing but a gross injustice, and destroys the very foundation of the public trust in the administration of American criminal justice. We wish to argue further that Mr. Kamiyama is a Japanese who can neither speak nor adequately understand English, and as such his state of mind is undeniably and typically Japanese. Therefore, it goes without saying that the differences between the criminal proceedings of the U.S. and Japan as well as the differences between the American concepts of Justice and righteousness and their Japanese counterparts must be carefully considered. We shall discuss these points in greater detail in the following pages.

[I] ON THE LACK OF CONDITIONS WHICH CONSTITUTE PERJURY AS A CRIME; LACK OF OATH, PERJURY WARNING, AND THE INJURIES TO THE RIGHTS OF THE ACCUSED CAUSED BY THE VIOLATION OF DUE PROCESS

First of all, we maintain that no perjury was committed in this case. For, (1) Oath was not administered in accordance with the requirements of the law, and (2) the witness was not informed of the sanction for perjury, and (3) the correct translation service between English and Japanese, which is a necessary prerequisite to establishing an act of perjury, was not made available to the witness.

In this case, at the time of the opening of the first session on the morning of July 9, 1981, the forelady routinely administered the oath (Appendix A p.1) saying aloud:

> "Do you solemnly swear that the testimony you are about to give to the Grand Jury in the matter now pending before it, shall be the truth, the whole truth, and nothing but the truth, so help you God?"

However the interpreter's rendition, that is, what Mr. Kamiyama heard as the contents of the oath, can only be described as "poor." The interpreter gave the Japanese translation exactly as reproduced in Roman phonetic alphabet (see Appendix A). This Japanese rendition of the above-quoted oath hardly makes any sense at all. As shown in our own English re-translation of the interpreter's Japanese rendition, the only part that made any sense was "regarding this case, we ... uh ... at this place, we think we would like to have you (kindly) convey only the truth." The interpreter said this in faltering and redundant Japanese. His reference to truth also remains ambiguous in his cut-up Japanese translation, which when translated word for word would read as "all the truth here, and well ... only the truth ... I would like to have you kindly convey the truth." (Appendix A, p.1)

This falls seriously short of the requirements for administering the oath as stipulated by the federal law and court procedure. The relevant rules require that oath be administered in a manner which conveys its solemn meanings to the witness. In response to such ambiguity in the translated Japanese version of the oath, Mr. Kamiyama finds himself at a loss. For instance, while the forelady asks the witness: "Do you solemnly swear ... ?" and the witness answers simply "Hai" instead of "Yes, I do." It is important to note here that in the context of spoken Japanese dialogue, the meaning of "Hai" is so vague, multifarious, and unspecific, and often does not mean what is meant by the English "Yes." Thus, our contention that the oath was not properly administered does have a factual ground.

Further, even though the oath was not properly administered, the prosecutor must still come forth to inform the witness of the penal sanction for perjury as well as of his rights as a witness. Certainly, the prosecutor told Mr. Kamiyama that if he would give a false answer, or does not give truthful testimony, he would be prosecuted separately for perjury or obstruction of justice. However, the interpreter's translation turns out to be a total mess. His Japanese rendition not only does not make any sense, but fails to point out the expected sanction for the crime. His translation comes, in our opinion, dangerously close to a total lack of any warning about perjury. Please refer to page 23 of our Appendix A for your own close scrutiny. This document contains everything that was said about the oath, warning on perjury, and explanation about human rights both by the prosector in the original English and the interpreter's Japanese translation with our own re-translation back into English. You will see through these pages that the interpreter's Japanese translation was nothing less than an unmitigated mess, never telling the witness about the legal sanction for perjury. We seriously regret that you cannot read the original Japanese translation, but allow us to quote our English re-translation below:

> "False answer or acts of negligence in testifying ... ... there are possibilities that you may be blamed separately in the light of the criminal law."

There is no warning to the witness at all, as you can see, about the punishment for perjury here. Here is our translation of the entire sentence: "For false answer or act of negligence in testifying, there are possibilities that you may be blamed separately in light of the criminal law." There is no warning at all on the punishment that can be imposed upon the witness for perjury. To be "blamed" would only be understood, in English as it is in Japanese, to mean "criticized," and on top of that such blame is described only as "possibilities." This falls ruefully short of the thrust of the true message of the prosecutor. The serious implications of commiting perjury, among other things, are lost completely in the translated Japanese context. The expression like "act of 'negligence' in testifying" must also be called quite inappropriate.

Mr. Kamiyama must have found himself at a loss faced with such perplexingly tangled-up Japanese expressions that from time to time he sounds as if he could not comprehend what was being said. For instance, as if proving this, Mr. Kamiyama asks his interpreter occasional questions for clarification. Note especially that he asks at this point: "That means not by the tax laws, but ... ...?" In the context of the dialogue as tape-recorded, this seems to be more than a good indication that Mr. Kamiyama knew he was not following what the court interpreter was saying in his poor Japanese. The interpreter, moreover, did not translate the witness' question in proper English, either. Questions and answers continue ... ... The prosecutor responded saying "That's correct. If you should testify ... ..." to Mr. Kamiyama's question, "Apart from the tax laws?" (See Appendix A p. 24) This is an incomplete answer. It does not say that the witness may be prosecuted and punished for perjury in addition to tax law violation. The interpreter did not, moreover, translate even this incomplete answer of the prosecutor. He merely let out unintelligible "uhs" without uttering a word. Thereupon, Mr. Kamiyama was prompted to ask for further clarification and started saying, "Then that means ... ...," but never fished it. Interpreter murmured an incomplete sentence without subject or predicate, "... ... if the testimony ... ... the testimony is distorted ..." and some more broken bits and pieces of sentences were thrown back and forth. Then, Mr. Kamiyama came out, perhaps after some guess work in his own mind, saying to the interpreter, "Does that mean I may be charged for perjury?" (of course in Japanese). Naturally, he said this in Japanese, and this time the interpreter was unable to come up with the English word "perjury" of all the wrong things he could do. As a result, he tried to beat around the bush looking for the right English word, throwing out Japanese words which seldom made any cohesive sense. After saying in English "Does that mean once again that I shall be charged for ... ...," (then got stuck without remembering the word 'perjury') he murmured to himself "... trying to find the right word ...," and he goes on for some more time uttering unintelligible words like "all right ... ... fraudulent answers, or fraudulent, well, negligence of ... uhh, testimony, or ..." (Appendix p.28)

The fact stands out that nobody answered the question posed by Mr. Kamiyama: "This means I may be charged for perjury?" ("To yuukotowa, gishoozai ni towareru to yuukoto desune" in original Japanese)

The interpreter, however, was merely able to render a Japanese translation which was as meaningless as it was incomprehensible. To begin with, this interpreter was unable to recall the English word "perjury" which he needed to translate the Japanese word "gishoozai" used by the witness. The interpreter starts his translation with "Does that mean once again that I shall be charged for ..." But, being unable to recall the word "perjury," he talks to himself, "... trying to find the right word ...," and struggles on saying "uhh ... ahh ... all right, fraudulent answers, or fraudulent ... well ... negligence of ... uh ... testimony, or ..." He went on murmuring something that is totally incomprehensible without providing the interpreting service to correctly translate Mr. Kamiyama's above question, and consequently failed to obtain the prosecutor's response to it.

It is obvious that the prosecutor could not answer clearly to such ambiguous questions. At this point, it seems as if the prosecutor himself began feeling uneasy about the obvious incompetence of the interpreter. Therefore, he re-stated in English, and unfortunately in English from the witness' viewpoint, that "if you should knowingly and willfully give false answer to the Grand Jury, that is a separate crime." However, the interpreter was again unable to translate this into Japanese. As quoted in page 29 of the Appendix A, the Japanese rendition does not make too much sense even to the Japanese, including myself. This is an ambiguous as well as incompetent translation to say the least. The interpreter's translation reads "Uh ... ... knowingly, you know ... ... Uh ... the meaning is that the act of making false statements or a twisting your testimony can become comparable to committing a sin."

Consequently, the interpreter was unable to recall the word "perjury" and went on beating around the bush looking for an appropriate word, without being able to put the right question to the prosecutor and have him answer "Yes" to Mr. Kamiyama's question. Under such circumstances, where there was an inappropriate oath administered and no warning of the sanction for perjury was given, it becomes impossible to substantiate that an act of perjury has been committed. Moreover, the difficulty to establish the crime of perjury in this case does not only arise from the lack of an appropriate administering of oath and of proper warning of the legal sanction, but also from the fact that, in establishing an act of perjury which can only become possible on the basis of specific verbal statements actually made, the statements used for this purpose were the products of the interpreter's extremely inaccurate translation of what was actually said both by the prosecutor and the witness. This constitutes a gross injustice, and therefore is far from being a fair trial, rendering it extremely difficult in the meantime to establish, if indeed it is ever possible, that an act of perjury was committed by the witness.

That a proper oath was not administered is obvious also at the beginning of the second session on July 9, 1981. The forelady says "the witness is still under oath," but the interpreter said: "The oath of this morning is still in force at this time ... ... the oath you took." In this case, the witness not only failed to understand the meaning of it, but also gave as his answer "Ha ..., " which comes too close to what the Japanese often utter when something is beyond his or her comprehension, and the interpreter failed to interpret this "Ha ..." to the prosecution. He was, in our opinion, duty-bound under oath to respond properly and translate whatever was said by the witness. However, the interpreter disregarded the bewilderment of the witness, or disregarded it as might have been the case. It was under such circumstances that the same interpreter failed to translate the warning on perjury as a crime or the Fifth Amendment. This alarming lack of proper and accurate interpreting of oath and the warning of the sanction for perjury happened again on July 16, 1981 at the opening of the second day of the Grand Jury hearing. That is, at the beginning of this morning session, the forelady repeated:

> "You do solemnly swear that the testimony you are about too give to the Grand Jury in the matter now pending before it shall be the truth, the whole truth, and nothing but the truth, so help you God (?)"

The interpreter's translations as retranslated by us into English, reads as follows:

> "You will (kindly) state as 'sankoonin,' we should like to have you state only the truth."

This is a statement of mere wish! It failed to convey the solemn interrogative of "Do you solemnly swear ... ...?" This was nothing but an expression of wish that the truth be told. The dialogue recorded in our Appendix A, p. 38, confirms this obvious point.

Especially, when the interpreter said "Korewa moo subete shinjitsu nomio tsutaete itadakimasu," (..we would of course like to have you state only the truth.*Appendix A p. 38) He used the Japanese word "sankoonin" instead of "shoonin" (witness). According to authoritative Japanese dictionaries, this word "sankoonin" means for one thing, "all persons, other than the suspect, questioned and examined by the investigative agencies in a criminal investigation." Secondly, it also means "such learned persons as are called upon by Diet committees to give professional opinions without formally calling a hearing."

The important point here is that Mr. Kamiyama is expressly told by the interpreter that he is being examined as a "sankoonin" in the above sense during the process of administering the oath to a witness. Therefore, it is especially important in this case that he was being treated as other than a suspect.

For these reasons, therefore, Mr. Kamiyama's answer "Yes," does not go beyond a mere statement of his understanding that the prosecution has such desire, or a wishful thought that the truth be (kindly) told. In other words, it was not at all the kind of "Yes" that comes in response to the question, "Do you solemnly swear ... ...?" in accordance with the requirement of the rules of administering the oath. In addition, when we listen to the taped hearing records, we hear the word "Yes," in response to the interpreter's Japanese translation. However, when we listened carefully, serious doubts arose as to who it was that gave this affirmative answer. In fact it sounds more like the voice of the interpreter than Mr. Kamiyama himself. After repeated and careful listening, we find ourselves strongly inclined to support the claim that the voice was not Mr. Kamiyama's, but the interpreter's. If so, this would mean that Mr. Kamiyama, in this case, did not

(*7/16/1981 Morning Session)

at all make any statement in answer to the forelady's question of "Do you solemnly swear ... ...?" This indicates that the administering of oath in this instance did not follow the procedure required by law, and therefore constitutes just another example supporting the contention that no proper oath was ever administered in the hearing. (We believe that a scientific voiceprint test will prove our point.)

Also, at the beginning of the morning session on July 21, 1981, there was no oath administered, nor is there any record reporting that such oath was administered, and there are reasons to believe no oath was administered. According to the official English transcript, Mr. Kamiyama was summoned as witness and duly sworn. The English transcript reads "TAKERU KAMIYAMA, called as a witness, having been first duly sworn (through the interpreter) by the forelady of the Grand Jury, testified as follows." However, there is something about this record which is difficult to understand. For, this same English transcript shows that the prosecutor 'let the record reflect' that the witness entered the Grand Jury room at 10:10 (a.m.). The prosecutor then says in the same transcript: "Let the record reflect that I am about to turn on the tape recorder at this time ... ... that I have turned on the tape recorder." This indicates that he had his act of actual turning-on of the recorder recorded in the transcript at this point in time. And further, he also had his act of having turned on the machine recorded in the transcript at about the same time. However, that portion of the official transcript starting from "Would you swear the witness in, please?" is abruptly followed by: "TAKERU KAMIYAMA, called as a witness, having been first duly sworn (through the Interpreter) by the Forelady of the Grand Jury, testified as

BY MR. FLUMENBAUM: Q Would you state your full name for the record?"

But,there is no record whatsoever which indicates in what way the oath of this session was actually administered through the interpreter. Further, judging from the sequence of events, it is quite unnatural to assume that Mr. Kamiyama had been sworn prior to this transcript recording.

Moreover, the actual tape-recording, which constitutes the official documented records of the Grand Jury along with the English transcript, begins on this day, and only on this day, with the prosecutor's questioning of Mr. Kamiyama. The first voice recorded by the tape starts with "Please keep your voices up so that the tape-recorder that we are using to record your answers in Japanese, Mr. Kamiyama, can pick up everything you say." Under normal circumstances, however, the first recording would show the forelady's administering of the oath. The July 21 morning session's taped record can be called highly unusual in comparison. We must, in any case, conclude that there are no transcripts and/or taped records indicating that oath was properly administered on this day.

How should we properly interpret and/or understand the fact that we cannot find any taped recordings of what was said and done at the beginning of the morning session on this day? Was it due to a mechanical breakdown, or the operator's mistake, or a willful act of destruction of records of some sort? We have no ground on which to determine just what the actual cause was. However, we cannot help but feel that there is something which points to the possibility of some existing problems, even though this is a problem separate from the other fact that there was no proper oath administered in this case.

During the morning session on July 21, the prosecutor informed the witness of the sanction for perjury. However, we must now prove the unfortunate fact that the prosecutor's explanation on perjury was not at all properly translated by the interpreter.

"Let me again repeat to you what I mentioned to you at both prior sessions that if you should give any false answer to any question that is put to you, that's a separate federal crime, and you can be prosecuted for that."

So explained the prosecutor on the nature of the penal sanction for perjury. However, this explanation was not at all properly translated by the interpreter. His Japanese translation, as quoted in our Appendix A, p. 54, is unbelievably inaccurate and hardly makes any sense even to us Japanese. Our re-translation into English follow:

"If you should make a false statement, because it will become a wholly new ... ... well ... ... guilt." (or criminal situation, or circumstances of crime--the Japanese word "zaijyo" can mean both.)

The interpreter used the word "zaijyoo" to mean crime in his translation, but "zaijyoo" is a legal term in Japanese meaning "criminal facts and circumstances" or the conditions under which a crime is committed, and, therefore meaning "extenuating circumstances" or "aggravating circumstances."

And further, to our disbelief, the most important words that had to be translated into Japanese, i.e., the prosecutor's statement:

"If you should give any false answer to any questions that I put to you, that's a separate federal crime, and you can be prosecuted for that."

This important statement by the prosecutor failed to show up in the officially recorded Japanese translation, which simply means that it was not translated at all by the interpreter.

He merely said: "Kyogino chinjutsuo nasaimasuto, sorewa zenzen aratana, mata, ano zaijyooto narimasu kara," (If you give a false statement , that will become, uh, again, completely a new guilt) and never added that it could constitute a federal crime, and he could be prosecuted for it.

In the context of such inadequate translation, in which an extremely ambiguous word like "zaijyoo" was used, we cannot help but conclude that the translation did not satisfy the requirements of properly notifying the witness of the possible sanction for perjury.

The lack of proper oath continued to be the case for the rest of the last day of hearing of July 21, 1981. On the afternoon of this day (Appendix A, p. 57), the forelady said:

"Do you solemnly swear the testimony you are about to give to this Grand Jury in the matter now pending before it shall be the truth, the whole truth, and nothing but the truth, so help you God?"

The interpreter's rendition as re-translated into English follows:

"We would like to have you give at the Grand Jury, we would like you to speak wholly the truth only."

This is again merely a statement of wish and polite request that the witness would speak the truth. It is not an interrogative sentence, and it does not contain the word "swear" or anything near it. It is for this reason, therefore, that the witness was unable to respond with an affirmative "Yes" answer. Mr. Kamiyama merely said "Hai, wakarimashita." In the typically Japanese context, this merely means that he understood that the prosecution had such hope and so expressed it. It was nothing near what the prosecutor and those others present who understood only English were led to believe it to be. They only heard the English version of the witness' answer which was translated by the interpreter as an affirmative "Yes" response to the question. The fact was that the witness did neither agree nor disagree to solemnly swear to tell the truth as asked by the Grand Jury. It was the interpreter who took it upon himself and answered "Yes" to the prosecutor, making it sound as if the witness did understand the true meaning of the oath, and responded with "Yes," meaning he agreed to solemnly swear. We cannot help but conclude, with regret, that the interpreter rendered an unfaithful translation in this case.

Having observed this low level of performance by the interpreter, and taking into our accout his dreadfully poor comprehension level and inaccuracy of the Japanese language, it is difficult to avoid the conclusion that Mr. Kamiyama has been denied a fair trial, a trial that is fair and impartial that everyone in the U.S. is entitled to under the law. If this is not, what else can be injustice?

In Japan, the oath in a criminal procedure is administered in accordance with the stipulations contained in the Code of Criminal Procedure and the Criminal Procedure Rules. The witness, except for the cases in which the law otherwise provides, is required to take the oath. The oath is taken, moreover, by the use of a written form, as required by Article 118 of the Rule of Criminal Procedure which contains a written oath that the witness swears that he or she would tell the truth, conceal nothing, and add nothing as conscience dictates. And, the witness is further required to read this oath aloud in the court, sign under it, and affix his or her seal to it. The witness, upon taking the oath, stands up and solemnly goes through the procedure. The oath must be administered, according to the law, one witness at a time, and never a group of witnesses.

And a witness to whom an oath has been administered, must be informed of the crime of perjury previous to his examination. (Rules of Criminal Procedure, 120).

[II] LACK OF NOTICE ON THE PRIVILEGES AGAINST SELF-INCRIMINATION

Then, let us examine the manner in which the witness had been notified of his rights to remain silent, namely, his "privileges against self-incrimination."

In this case again, it is apparent that his Fifth Amendment rights have not been understood by Mr. Kamiyama at all because of extremely inappropriate interpreting. For those who know the American criminal law, it is only too clear that the Fifth Amendment stipulation reads:

> "..nor (a person) shall be compelled in any criminal case to be a witness against himself ..."

This is an extremely importnat right accorded in order to guarantee the defendant's human rights. It is only too well-known to those who have the working knowlege of American criminal justice that the abandoning of rights is often bargained for criminal immunity between the prosecution and the defense. However, in this case, the witness was not notified of this essential right because the prosecution announcement was not properly translated by the interpreter. It must be pointed out that this is an extremely serious violation of due process.

In other words, Mr. Kamiyama had been indicted, tried and is now about to be imprisoned without due process of law.

Now let us follow the records to see how Mr. Kamiyama was informed of this important right. As shown in page 3 of Appendix A, the prosecutor makes the following statement at the opening:

"And in connection with your appearing before this Grand Jury, you are entitled to certain rights. Let me explain to you what these are. First, you may refuse to answer any question if a truthful answer to that question would tend to incriminate you personally, in any way, shape or form. Do you understand that?"

However, the interpreter is totally incoherent in his translation and fails to convey the meaning of this statement. Looking at the Japanese translation, we find that the interpreter has actually said as follows:

"and ... uh ... based on the summons concerning your appearance in court today, there are several rights granted to you. I will have the pleasure of explaining these to you. First, you are able to refuse answers to questions which may cause you to fall into sin. Do we have your kind understanding?"

It is obvious that the phrase, "which may cause you to fall into sin" is extremely inaccurate as a translation of the word "incriminate." Furthermore, the prosecutor's next statement on page 5 says:

"Anything you do say here today could be used against you, not only by this Grand Jury but in the court of law."

The translation of this, again, is extremely inaccurate. The Japanese rendition by the interpreter is shown in our English re-translation on page 5 as follows:

"There is a possibility that it will not be good for you ... will be to your disadvantage."

First of all, what the interpreter says is very inaccurate. But, that is not all. It is also quite ambiguous as to whether (1) the witness' certain statements or what he says is not going to be 'good for him' and will be 'to his disadvantage,' or (2) that the witness' act of testifying itself will not be good for him, and will be to his disadvantage.

As evident in our English re-translation of the interpreter's Japanese, this interpreter makes constant use of honorifics in deference to Mr. Kamiyama. He thus confuses the prosecutor's statements by using excessively courteous words to show respect to the witness. "What you kindly state ..." is merely a polite form of "What you will state ..." in Japanese, for an example.

Mr. Kamiyama asks the interpreter, "What did he say?" at this point. This is an indication which reveals very well the chain of circumstances in which he found it totally impossible to understand the interpreter. However, the interpreter only said in English, "He wants repetition." It must have required some courage for Mr. Kamiyama to pose such question. This question asked by Mr. Kamiyama is a good indication that he did not understand what was said by the interpreter as well as a revelation of how little he was able to follow the ongoing court proceedings.

In response to the interpreter's "he wants repetition," the prosecutor repeats his explanation as follows:

> "You should be aware that anything you do say in front of this Grand Jury can be used against you not only by this Grand Jury, but also in any court proceeding."

Unfortunately, however, the translation of this statement again by the interpreter shows extreme confusion. In reviewing the interpreter's Japanese, let us first directly quote the original Japanese translation as said in the court:

> "Kyoo anataga chinjutsu nasarukotowa, kono daibaishinde, maa ... anatani furini tsukawareru kotomo arudeshooshi, sorekara, ano ..." (Appendix A, p.7)

It must be said that this is utterly incoherent as Japanese, and it is indeed bewilderingly difficult to understand. In "Our English Version," we have tried to render the interpreter's Japanese into English as closely as possible and, therefore, in reading these English re-translations, you will also find it often incomprehensible. What is significant here is that the interpreter's courteous wordings greatly weaken the impact of the prosecutor's statement, " ... could be used against you," and what should be translated in a straightforward fashion is expressed as a mere conjecture: "there is a possibility that it will not be good for you."

This is an exceedingly weak conjecture, and in Japanese, it holds the connotation that (his statement) will in fact be rarely used against him, but it just might. Therefore, the idea conveyed by the interpreter to the witness is that he didn't have to worry.

The second point in question is the translation of " ... in any court proceeding." This section is translated by the interpreter as, " ... legal ... uh ... in the future steps from now on, continuous ... and among them," making it impossible to comprehend. The word 'tejun' that he uses for 'proceeding' signifies 'steps'; for instance, an example of this is 'wrong step,' meaning, for instance, to push Switch No. 2 instead of Switch No. 1 in reverse sequence to start up a machine. This being the normal usage of the word, it is entirely inappropriate to use 'tejun' as a translation of 'proceeding' or 'court proceeding.' It is indeed difficult to explain, therefore, why the interpreter translated 'court proceeding' as 'legal steps' in this instance unless we presume that the interpreter was completely ignorant of legal terminology.

What is further inadmissible is that he says in Japanese words: "the possibility exists ... (that the statements will be) used especially disadvantageous to you," as the translation of the English original " ... can be used against you." This Japanese rendition virtually means that there is hardly any possibility that they will be used against the witness. A more correct translation would have been that the witness' statements had "some possibility to be used" against him. Therefore, "the possibility exists ... (that the statements will be) used ..." is extremely weak, and the meaning conveyed is that "the possibility does exist, but will most probably not be used."

Mr. Kamiyama must have been absolutely perplexed by such ambiguous translation. And the attitude, facial expression, and behavior of the witness must have caused some misgivings in the mind of the prosecutor. For, he asks again, "Do you understand that?" to the witness.

There is an important point to be noted here. The interpreter paraphrases the prosecutor's question by asking the witness, "Sorewa meihaku desuka?" or in English translation,"Is that clear?" Therefore, naturally the witness' answer was not a clear-cut and to-the-point reply of "Yes, I understand."

Therefore, the interpreter who read from Mr. Kamiyama's facial expression that he did not comprehend, addressed himself directly to the witness saying (in Japanese) "You cannot understand?" or "You do not understand?" (Appendix A, p. 8) These words which the prosecutor did not state, were added on by the interpreter. In other words, this was a question posed by the interpreter to the witness, and not by the prosecutor.

This example in itself illustrates the extent of confusion in the exchange of statements before the Grand Jury, including the interpreter. Then, why had Mr. Kamiyama answered, "Yes, I understand," at the end of the exchange? It is our conclusion that, sympathized with the confused interpreter, Mr. Kamiyama had drawn his own conclusion on what message the interpreter was trying to convey to him, and said what he said to help him. However, there is no way we can fathom the real depth of the gap that existed between what the prosecutor said and the self-drawn conclusion that Mr. Kamiyama had reached in his own mind.

Next, the prosecutor gives a warning to Mr. Kamiyama concerning what this Grand Jury is investigating:

> "You should be aware that this Grand Jury is specifically looking into your conduct in connection with various violations of federal criminal law relation to tax matters." (Appendix A p. 14)

Here again, an entirely inappropriate translation is rendered in Japanese,causing confusion. That is to say that the prosecutor had said that investigation was being made especially with respect to Mr. Kamiyama's conduct relative to the possible criminal violations of tax laws. The interpreter, however, said: "Kono daibaishin wa, anataga renpooseifu no zeikin ni kansuru ikutsukano ihookooi toyuu kotoni tsuiteno choosa ni atsumatte orimasu." This hardly makes any sense even as a Japanese sentence. What follows is our re-translation of the interpreter's Japanese translation:

> "Uh ... the meaning of what I had the honor of saying to you is that this Grand Jury will investigate whether or not you have done something like violating the tax laws. Is that obvious?"

Mr. Kamiyama, after listening to the interpreter,asks in turn, "Concerning me personally?" (in Japanese) This means that the witness could not understand the interpreter at all, and that is why he asked: "Watashi kojinni taishiteno desuka." The interpreter translated this as "Does that pertain to me in person?" He is asking the prosecutor whether it was "concerning him personally." In reply to this, the prosecutor explains again that the investigation specifically pertains to "your conduct in connection with possible violations of federal criminal law;" however, as the interpreter was unable to comprehend the meaning of this, he again renders a chaotic translation. This Japanese rendition is obviously a mistranslation which well illustrates the confused mind of the interpreter.

"That ... uh ... means your personal, .. uh ... personal act of violation concerning the criminal laws related to taxes of the federal government."

This is a total mistranslation, a total mistake in which the interpreter wrongly understood "your conduct" to mean "personal act of violation." In other words, he conveyed to the witness that the investigation pertained to Mr. Kamiyama's own act of violation of the tax laws. This, indeed, is a mistranslatioin of an essential matter which constitutes the very foundation of all the following procedures. It is absolutely incredible that the progress of investigation of the Grand Jury as well as the testimonies of Mr. Kamiyama, both of which were based upon such gross errors in translation, and it is an incredible situation that the results of such investigation and such testimonies were used to indict Mr. Kamiyama on charges of perjury and find him guilty of the alleged crime.

It is manifest that what the prosecution and the Grand Jury were investigating, was not the personal act of violation of the tax laws by Mr. Kamiyama. After the confusing exchanges, Mr. Kamiyama reconfirms:

"Does that mean something like I have evaded payment of taxes?"

Mr. Kamiyama asks this in order to check again, whether the investigation concerns his personal evasion of tax payment. However, as apparent by the actual indictment, the object of the Grand Jury investigation was to examine the tax evasion of Reverend Moon. They were not examining the act of tax evasion by Mr. Kamiyama himself, but his possible role as an accessory aiding and abetting Reverend Moon's evasion of taxes. In this sense, the translation rendered by the interpreter was most inadequate, and Mr. Kamiyama was not informed of the proper content of the investigation, nor could he comprehend what the charge actually was.

On the other hand, the prosecution's reply toward this urgent question posed by Mr. Kamiyama is extremely ambiguous. Mr. Kamiyama asked (in Japanese):

"Does that mean something like I have evaded payment of taxes?"

The interpreter translates the question (into English):

"Does that mean that you are saying something like, I have violated tax laws?"

The prosecutor first answers to this by saying:

"No."

But he then continues:

"All I'm saying, Mr. Kamiyama, is that the Grand Jury is investigating whether or not you personally may have violated the tax laws. You understand that?" (Appendix A p. 17)

The relationship between this "No." and "All I'm saying is ..." is not clear, and invites confusion. For, the prosecutor seems to be asking,:

"We are examining whether you have evaded the payment of taxes."

The interpreter then translates this as follows (our re-translation into English):

"(The Grand Jury) will investigate whether you have (kindly) taken actions like the violation of tax laws."

This does not clear the confusion. Mr. Kamiyama still does not understand. For, he asks again:

"A violation relative to tax laws?"

Which the interpreter translates as:

"... does that pertain to my possible violation of the tax laws?"

The prosecutor replies:

"We are looking into your possible violation, Yes."

This series of exchange is extremely unclear. The prosecution first says, "your conduct," and then at the end, "your possile violation," but the meanings of these statements are very vague, and further it is not clear whom the word "your" refers to. Furthermore, the interpreter embellishes this translation with something the prosecutor had never said: "That's the meaning." (in Japanese) He also adds, that there "might have possibly been ... (acts of violation)" which weakens the entire statement, and makes its meaning more ambiguous.

Observing Mr. Kamiyama's facial expressions, the prosecutor asks once again: "Do you understand that?" to which, out of courtesy again, the witness replies, "Hai,wakarimashita," (Yes, I understand.) but this does not mean that he has understood the prosecutor's explanations. He meant to say "I (am) hear(ing) what you say," although he did not understand the circumstances and the facts themselves at all. The Japanese phrase, "Hai,wakarimashita," does not mean "I understand the content of what you have said."

In the first session of July 16, 1981, (Appendix A p. 43), Mr. Kamiyama said, "My attorney told me that it would be better (for me) to make this statement," and read the following statement which was probably prepared by his attorney and written in Japanese: (our English re-translation, Appendix A p. 44):

"I have done the preparations in order to answer the questions concerning the content of the affidavit submitted to the Justice Department the other day. However, as I am the person who is the object of the investigation this time, I would like to maintain my rights guaranteed by the Constitution."

However, the interpreter's rendition shows serious discrepancies with the Japanese read out by the witness. What cannot be overlooked especially has to do with the Fifth Amendment, and is of utmost importance. In his Japanese statement, Mr. Kamiyama says:

"I have done the preparations in order to answer the questions concerning the content of the affidavit submitted to the Department of Justice the other day."

And, the interpreter translates this into his English as follows:

"I am prepared to answer questions dealing with information contained in the affidavit which I submitted to the Department of Justice." ... And then, he continues:

"However, since I'm a target of this investigation, I wish to reserve the rights to claim my constitutional privileges with respect to other questions."

In other words, according to the interpreter's translation, the witness is determined to answer all the questions relating to the matters contained in the Justice Department affidavit, but reserved his constitutional privileges relative to the questions on other matters.

Yet, this is an obvious mistranslation, and a serious error. Mr. Kamiyama's "I have done the preparations," merely means that he is ready and able to answer as to the questions connected to the content of the affidavit.

It can also be taken to mean that the witness merely refreshed his memories and did similar other preparations in order to answer questons.

Mr. Kamiyama's statement, "I have done the preparations in order to answer the questions," (in Japanese) may be translated on the one hand as his being prepared and willing to answer, or it may also be translated and interpreted as his having made various necessary preparations needed for answering questions. The ambiguity of this sentence permits it to be variously translated. However, it is an obvious mistake to render this statement to mean that the witness is willing to abandon his constitutional privileges as to questions concerning information contained in the affidavit.

The interpreter understood that the witness was to abandon his constitutional rights (those under Fifth Amendment) concerning information included in the affidavit, and that he wished to reserve his constitutional privileges regarding questions on other subjects. This was indeed a serious error in translation. Rather, Mr. Kamiyama's statement meant that he would answer questions dealing with the contents of the affidavit, but on the other hand, he himself being investigated, and therefore not in a position of a mere witness, and possibly be accused for the crime afterward, and therefore, choose to reserve and assert his rights guaranteed by the consitution.

There was no intent whatsoever, of abandoning his constitutional rights, or the right to keep silent concerning questions dealing with the content of the affidavit submitted to the Department of Justice. This is indeed a grave error which absolutely must not be overlooked. However, as the interpreter gave the aforesaid rendition, that is, that he was prepared to answer questions dealing with the information in the affidavit without exercising his privileges, the prosecutor replied as he did:

"At any time, when I ask you a question and you want to invoke your Fifth Amendment privileges, please feel free to do so, if you like."

Yet, the interpreter was not able to interpret even these words of the prosecutor into proper Japanese. What is astonishing is that the interpreter made another incoherent, faltering Japanese translation attempt, but could not intelligibly translate this Fifth Amendment privilege: He said:

"..you are protected by the revised item of the Fifth article ..."

There is no mention of the Constitution, nor the privileges of the Fifth Amendment at all in this rendition.

At the beginning of the first session of July 21, 1981, the prosecutor again informs Mr. Kamiyama, the witness, as to what this Grand Jury is investigating. Yet, here again, the explanation concerning the object of this investigation is extremely vague, and Mr. Kamiyama does not receive adequate notification of what facts are being examined. (See Appendix A, p. 52)

As has been argued above, our study of this case shows the fact that first, the oath was not properly administered, and secondly the witness was not informed of the possible sanction for perjury, and thirdly, the witness was not properly notified of his most important right guaranteed under the Constitution that he is not to be compelled to testify against himself.

Thus, we must conclude that justice would not tolerate the punishing of Mr. Kamiyama for perjury under such circumstances.

Moreover, this is not all. As it has become clear by our examination of the records, the interpreter assigned to this case is found to be too incapable of properly translating the requisite conditions which constitute an act of perjury. Not only that this interpreter was incapable of notifying Mr. Kamiyama of this, but also he has failed, in our considered opinion, to precisely translate Mr. Kamiyama's testimony into English. As is obvious to all, whether an act of perjury was committed or not is a matter of interpretation of the contents and the wordings of the testimony of the witness. The differences we have found between Mr. Kamiyama's testimony in this case and its English translation by the interpreter, as well as the differences between the English questions put to the witness by the prosecutor and the Japanese translation rendered by the interpreter too often possess too serious implications. To prove, using the service of such interpreter, that an act of perjury has indeed been committed is obviously a very difficult task for the prosecution.

If we go into examining the records of this case, we find them filled almost everywhere with improper, and often erroneous, translations. Allow me to cite some typical examples. For instance, let us take the statement of the prosecutor on the Specification 6 of Count 11:

"Was any of the money in the Family Fund ever used as expenses for the Japanese members who had come to America?"

However, the interpreter was unable to translate even such a simple English sentence. His translation reads:

"Nihon kara no kyoodai tachiga, tobeishitekuru. Sono tobeisuru tameno hiyooni, family fund kara tsukatta kotoga arimasuka?" (From the family fund did (someone) ever use the money to pay for the expenses incurred by the Japanese brethren coming, ... for the purpose of coming to the U.S.?")

This translation is in terrible error. To begin with, this translation missed the point of asking whether the fund was ever used to defray the expenses incurred by the Japanese members who had come to America.

Mr. Kamiyama, speaking in Japanese, asked the interpreter at that point: "Tobeisuru tameno? Kotchie kurutameno?" (For the purpose of coming to the U.S.?, in order to come to this side?)

And, in response to this question, the interpreter, still speaking in Japanese, restated what he thought was meant by the prosecutor's question saying:

"Hai, kotchie kurutameno, keihi, hikooki datoka, taizaihi datoka, soyuukotoni kono family fund no okaneo expense toshite tsukatta kotowa arimasu ka?" (Yes, for the coming to this side, expenses like airplane fare, lay over expenses, for these purposes have the money from this family fund ever been expended?) In response to this, Mr. Kamiyama answered, "Sorewa naidesune." (There ~~wasn't~~ weren't such cases.) The interpreter then translated this into English as "No, we never did that."

This translation, or mis-translation correctly speaking, rendered by the interpreter naturally led both the prosecutor and the members of the Grand Jury, all of whom did not know Japanese in any meaningful way, into understanding that his answer by the witness rendered in English as "No, we never did that," as the witness' answer to the prosecutor's question:

"Was any of the money in the Family Fund ever used as expenses of the Japanese members who had come to America?"

However, as I have proved it to you, this is in no way the answer to the prosecutor's question.

The same thing can be said about the following exchange between the prosecutor and the witness right after this:

"So why didn't you put this money in the bank account?"

Asked the prosecutor. And, the interpreter, instead of correctly translating this into "Naze anatawa kono okaneo bank ni yokin shimasen deshitaka," to our dismay comes out as:

"Naze kono okaneo, ginkoono koozani iretanoka?" (Why did you put this money into the bank account?)

This is an affirmative question whereas the prosecutor's question was in the negative, and a complete reversal of the meaning of the verb! And, Mr. Kamiyama responds to this question rather irrelevantly as "Arubunwa iremashita. Arubunwa kyookai ni keep shimashita." (Put a portion of it into the account, and a portion of it was put aside at church.)

Exchanges at crosspurposes such as these are found quite frequently throughout the hearing.

And, these irregularities, inappropriateness, and crosspurposes have rendered the basis for establishing the perjury crime so precarious as to be unacceptable.

Article 28 of the Federal Rules stipulates that the court can appoint interpreters based on its own selection. Furthermore, Article 604 of the Federal Rules of Evidence states that standards for experts should be applied to the selection of qualified interpreters, and that interpreters are required to take oath to interpret the truth. However, the interpreter assigned to Mr. Kamiyama's case can hardly be called an expert of either the Japanese or the English language. His incompetence, and the grave deficiency in ability to translate between the two languages brought about the present unfortunate consequence.

Through what procedures was the interpreter of this case selected and appointed? If the selection of such interpreter had been made intentionally, or by mistake on the part of the prosecution, this cannot be called a fair procedure, or fair trial.

As long as trials are permitted to remain subjected to such interpreters, the rights of minorities in the American society can never be properly protected.

We hereby demand that a trial based on just and due process be held using an able, competent, and qualified interpreter. The sentence for Mr. Kamiyama must be vacated, and this case must be retried with such an expert intertreter, to begin with. It is justice it self that demands such retrial.

[III] CONCERNING THE GUARANTEE OF THE RIGHT TO REMAIN SILENT AND THE PRIVILEGE AGAINST SELF-INCRIMINATION

Article 38.1 of the Constitution of Japan states that no person shall be compelled to make statements against himself. Based upon this, the Japanese Code of Criminal Procedure states that the defendant may be silent all the time, and may refuse to answer any questions. If a defendant agrees to voluntarily make a statement, the presiding judge can, at any time,question him concerning matters deemed necessary. The associate judge, the prosecutor, the attorney, co-defendant and his attorney who are attendant can also, by so informing the presiding judge, question the accused to give a statement, stipulates Article 311 of the Code of Criminal Procedure.

Therefore, the judge, after the completion of the reading of the indictment, must inform the defendant of his right to remain silent at all times, or to refuse to answer any questions, according to Article 291, Section 2 of the Code of Criminal Procedure. Also, the public prosecutor, the associate officers of the public prosecutor, the judicial police officials, and the like who belong to the office of criminal investigation can summon the suspect for questioning if and when such action becomes necessary for the conduct of criminal investigation. They must also inform the suspect in advance, however, that he or she is not required to make a statement against his or her own will, and may make any statement if he or she wishes ~~to remain silent~~ according to Article 198 of the Code of Criminal Procedure.

However, these are considerably different from the privileges to refuse self-incrimination granted under the U.S. legal system. In America, the accused can relinquish his or her rights and testify as a witness, but in such case he or she must make testimony which might be against his or her own interest, and is subject to the sanction for perjury. Also, the witness can exercise his privilege to refuse self-incrimination, but such privilege applies only to such questions as are specifically self-incriminating. However, in Japan the accused is not considered to be qualified to act as an witness. Therefore, even if the accused should have made false statements, such act does not constitute perjury, nor are there comparable problems relative to the renuciation of privileges. The accused is granted the freedom in Japan to decide for himself or herself whether he or she should make a statement regardless of whether it is, or is not in the interest of the accused. And, even after the accused has already begun to make a statement, he or she is not considered to have renounced his or her right to remain silent, and is allowed to refuse to answer specific questions subsequently asked. In the U.S., the status of the accused as an adversary is thoroughly established, but it does not necessarily follow that the safeguard of the interest of the accused is also thoroughly assured. In Japan the accused cannot become a witness. However, insofar as the accused wishes to voluntarily make a statement, he or she can easily do so, and the court and those concerned can also ask him or her to make a voluntary statement. Also in Japan, the act by the accused of destroying or falsifying the evidence relating to his or her own criminal case does not constitute a crime. It is only when one destroys or falsifies the evidence relative to a criminal case of someone else that one's acts constitute a crime of evidence destruction. This is based on the philosophy that it is in human nature for one to try to destroy the evidence involved in one's own criminal case, and therefore to punish one for such act is too cruel a sanction. Thus, the thoughts behind the Japanese concept of the crime of perjury and/or destruction of evidence are markedly different from those accepted in the United States.

In this respect and for this reason, the fact that Mr. Kamiyama is a Japanese, and as such has lived all his life within the conceptual confines of the Japanese justice and judicial system, must be especially remembered. Indeed, his motives and actions are so typically Japanese as far as we have observed them.

If, Mr. Kamiyama had been tried in a Japanese court under the jurisdiction of the Japanese laws, Mr. Kamiyama would not be called upon to testify as a witness. In Japan, we do not have a Grand Jury system, nor can the suspect and/or "sankoonin" (others questioned and examined by the prosecutor: see explanation above) be forced into saying things that they do not wish to state. I already explained before that in Japan they can say whatever they wish to state, including lies, without being prosecuted for perjury.

Moreover, for Mr. Kamiyama the testimony was made on the activities of his revered master, Reverend Moon. In such setting, the typically expected Japanese behavior is to try to protect others, especially his master or superior, by asserting his responsibilities, both real and not real, to a point of self-incrimination. Such act of self-sacrifice has always been considered to be a virtuous rather than sinful act in the Japanese social and moral context. Judged by the Japanese sense of morality, this is a consequence of one's socially desirable course of action. Let me quote from a profoundly interesting case study of the Japanese consciousness by the age groups. The survey was taken in 1979, using face-to-face interview of two different age groups, one of those between 15 and 24 years of age, and the other those above the age of 25. 10,000 samples were taken of the young group and 6,000 samples of the older adults. The survey was taken by . the Prime Minister's Office, and contains such interesting questions as would relate directly to our case in question on the court-administered oath.

The question asked reads: "In court, you are expected to swear to tell the truth as your conscience dictates. But, suppose there is a witness who told a lie while being questioned about his close personal friend's possible violation of election laws. Do you think it couldn't be helped if it was not morally right to tell a lie under such circumstances? Or, how about a man questioned about his company's possible election law violations? Do you think it couldn't be helped

in such a case? How about your own relatives involvement in such case? How about your personal benefactor. You think you cannot help telling a lie in such case

Of those who acknowledged that it could not be helped:

(1) In case of personal close friends, 43.4% of the young group and 37.7% of the older group answered that it could not be helped, i.e., affirmed a perjurious act.

(2) In case of one's own company, 38,7% of the young group and 33.3% of the older group answered that it could not be helped, i.e., affirmed a perjurious act.

(3) In case of relatives, 48.5% of the young group and 42.0% of the older group answered that it could not be helped, i.e., affirmed a perjurious act.

(4) In case of one's benefactors, 50% of the young group, and 42.7% of the older group answered that it could not be helped, i.e., affirmed a perjurious act.

These results seem to indicate that nearly the majority of the Japanese affirm an act of perjury as unavoidable under certain circumstances. In the case of benefactors, more people affirm a perjurious act as unavoidable than otherwise. This example is presented here to support my argument that the court handling this case should seriously consider certain aspects of the cross-cultural differences between the American and the Japanese patterns of social and moral behavior, which have had serious bearings on a case such as that of Mr. Kamiyama.

We see in this context a naturally expected cross-cultural friction in the field of judicial administration between two countries. Under such circumstances, therefore, the privileges granted him under the Fifth Amendment to the U.S. Constitution should have been thoroughly broached to him. However, in this criminal case, the actual process of notifying the witness of such privileges was sadly inadequate as we have seen in this report. There was not even one reference to the Constitution! To punish Mr. Kamiyama for alleged perjury based on the Grand Jury testimony made by him under such circumstances, and to use this as the first instrument with which to open the way into the subsequent investigation and court trial, is tantamount to the destruction of public faith in America's administration of criminal justice. America ought to send this case for a retrial in accordance with the principle of due process and fair trial. Or else, this case is bound to draw criticism as an act of political suppression of religious freedom in the United States.

This is my legal opinion, sincerely and respectfully submitted.

佐藤欣子

July 18, 1984
Tokyo, Japan

Kinko Sato
Attorney-at-Law
2-3-5 Eifukucho
Suginami-ku, Tokyo
(03) 322-1888

Curriculum Vitae

KINKO SAITO SATO

Date of Birth April 26, 1934 (Tokyo, JAPAN)

Educational Background

B.LL. University of Tokyo,(1958)
Judicial Apprentice, Judicial Research and Training Institute, Supreme Court of Japan (1958-60)

Positions Held

Public Prosecutor, Tokyo and Yokohama District Public Prosecutor's Office (1960-1965)

Human Rights Fellow, United Nations (1962-63)

Professor and Deputy Director, United Nations Asia and Far East Institute for Prevention of Crime and Treatment of Offenders (1966-1970, 1972-1975)

Research Fellow, Law School at Harvard University and Radcliffe Institute (1970-1972)

Senior Research Fellow, Research and Training Institute of Ministry of Justice (1975-1978)

Representative of Japanese Government to the Third Committee of United Nations General Assembly (1976, 1977)

Member of the Prime Minister's Study Group on Family Policy (1978-1980)

Councilor, Prime Minister's Office for Youth Affairs (1978-1981)

Current Positions

Attorney at Law

Executive Director, Fuso Publishing, Inc.

Member, Programme Advisory Council, Office for TV Code Affairs, Fuji Telecasting Company Ltd.

Member, Prime Minister's Commission for Peace and Security

Major Publications

*Torihiki-no-Shakai -- (The Bargaining Society, American Criminal Justice,)*Tokvo: Chūō Koron-*Sha*, 1974.

Enma to Megami -- (The Yama and Goddess, Two Concepts of Justice, Japan and U.S.), Kyoto P.H.P., 1979.

"Japanese Mother and Children from a Comparative Perspective," in *Ten Chapters on the Japanese*, (coauthor), Tokyo, Chobunsha, 1981.

"Beyond Feminism," in *Proposals for the 21st* Century (coauthor), Kyoto, P.H.P., 1979.

Keisatsuken no Ishiki to Kodo (Translation of (Translation of Justice without Trial: Law Enforcement in a Democratic Society by J.H. Skolnick), Tokyo, University ofTokyo Press, 1971.

Many other articles for various newspapers, magazines, and so forth.

Appendix A

WHAT ACTUALLY HAPPENED AT THE OPENING OF EACH OF THE SESSIONS OF THE U.S.

GRAND JURY HEARING ON JULY 9, 16 AND 21

The contents of this Appendix are excerpts from the transcribed recordings of the above-mentioned sessions, with a translation from the Interpreter's original Japanese into English by Yutaka Okamoto.*

*Curriculum vitae attached

July 9th, 1981 Morning Session 1

FOREMAN: " Do you solemnly swear that the testimony you are about to give to this Grand Jury in the matter now pending before it, shall be the truth, the whole truth, and nothing but the truth, so help you God?"

INTERP: konkaino kono kaisuwa desuna, kokodewa shinjitsuwa subete, ano, shinjitsu
今回の このケースはですね、ここでは 真実はすべて、あの 真実
nomi wo tsutaete itadakitai to omoimasu.
のみを 伝えて いただきたいと 思います.

OUR ENGLISH VERSION OF INTERPRETER'S JAPANESE

"Regarding this case, at this place we think we would like to have (you) kindly convey only the truth."

(NOTE: The words in () are only implied and not actually uttered as it is customary in the Japanese language.)

WITNESS: hai -Yes.
はい イエス

INTERP: Yes

OUR TRANS: Yes.

PROS: And in connection with your appearing before this Grand Jury you are entitled to certain rights. Let me explain to you what these rights are. First, you may refuse to answer any question if a truthful answer to that question would tend to incriminate you personally, in any way, shape or form. Do you understand that?

INTERP: Sorekara ., Senoo. shokanjo ni motozuite anatano honjitsu no desune,
それから anatano その 召喚状に基づいて あなたの本日の ですね
あなたの
shuttei ni kanshita, anatani ataerareta ikutsuka no kenri ga arimasu. Sorewo
出廷に関して あなたに与えられた いくつかの 権利 があります。 それを
gosetsumei shimasu. Sono daiichiwa anatawo tsumini otoshiireruyoona shitsumon
ご説明します。 その 第1は あなたを つみに 落としいれるような 質問
ni taisuru kotaewo, anatawa kyozetsu suru kotoga dekimasu. Sorewa anoo, goryoo
にたいする 答を あなたは 拒絶する ことができます。 それは あのう ごり
kai dekimashitaka?
解 できましたか。

OUR ENGLISH VERSION OF INTERP'S JAPANESE:

And ... uhh ... based on the summons concerning your appearance in court today, there are several rights granted to you. I will have the pleasure of explaining these to you. First, you are able to refuse answers to questions which may cause you to fall into sin. Do we have your kind understanding?

WITNESS: Yes..
イェス.

INTERP: Yes.

PROS: Second, anything you do say here today could be used against you, not only by this Grand Jury but in the court of law. Do you understand that?

INTERP: Sorekara, kokode kyoo anatage chinjutsu sareru kotowa desune,
それから ここで 今日 あなたが 陳述 される ことは ですね
anatano tameni naranai, anatani furini naru toyu kotoga ariemasu.
あなたのためにならない。あなたに不利になるという ことが ありえます。
Sono kotowa goryookai negaemasuka?
その ことは ご了解 願えますか。

OUR ENGLISH VERSION OF INTERP'S JAPANESE:

And then what you will kindly state here today ... there is a possibility that it will not be good for you ... will be to your disadvantage. Could I solicit your understanding?

WITNESS: Nanto ittano?
何と 言ったの

INTERP: He wants repetition.

OUR ENGLISH VERSION OF WITNESS: What did he say?

PROS: You should be aware, that anything you do say in front of this Grand Jury can be used against you. Not only by this Grand Jury, but in any court proceeding. Do you understand?

INTERP: Kyo, anatage chinjutsu nasaru kotowa, kono Dai Baishinde,
今日 あなたが 陳述 なさる ことは、この 大陪審で、
maa, anatani furini tsukawareru kotomo arudeshooshi, sorekara,
まあ、あなたに 不利に 使われる ことも あるでしょうし、それから
ano, hootekina, kongono desune, tejun, kongono keizoku suru sono
あの 法的な 今後の ですね、手順、今後の 継続 する その
nakademo, anatani furini, Sorega tsukawareru kanooseiwa arimasu.
なかでも あなたに 不利に それが 使われる 可能性は あります。

OUR ENGLISH VERSION OF ~~PROS~~ interpreter's Japanese:

What you will kindly say at this Grand Jury (hearing) today,

well ... may have a chance to be used against you, and uh ...

the possibility exists ... legal ... uh .. in the future procedures

from now on, continuous ... and among them, uh ... used especially

disadvantageous to you.

PROS: Do you understand that?

INTERP: Sono kotowa meihaku desuka? Owakarini naranai...?
その ことは 明白 ですか？ おわかりに ならない…？

OUR ENGLISH VERSION OF INTERPRETER'S JAPANESE: Is that clear?

...not kindly, understand?

(Over-polite form of 'You don't/can't understand?)

WITNESS: Hai, Wakari mashita.
はい、わかりました。

INTERP: Yes, I do.

OUR TRANSLATION: (No,) I understand.

PROS: Also in connection with your appearance, you are entitled to consult with your attorney. Although the attorney cannot be in the Grand Jury with you, he or she could be outside the Grand Jury room and you could ask to excuse yourself from time to time. You understand that?

INTERP: Sorekara honjitsuno shutteini kanshite, anatano bengoshisan
それから、本日の 出廷に 関して、あなたの 弁護士さん
to sodan surukotowa kenri toshite arimasu.
と 相談 することは、権利 として あります。
Sorekara, daibaishinno nakani anatano bengoshiwa haitte kimasen
それから、大陪審の 中に、あなたの 弁護士は 入って 来ません
keredomo, hitsuyoo to araba tokidoki anatawa sekiwo hazushite sodan suru kotoga
けれども、必要と あらば、時々、あなたは 席を はずして 相談 する ことが
dekimasu. Soremo owakari ni narimasuka?
できます。それも おわかりに なりますか。

OUR ENGLISH VERSION OF INTERP:

And, concerning your appearing in court today, the consulting of

your lawyer exists as a matter of rights.

Your attorney will not enter the Grand Jury room, but if necessary, you can leave your seat at times to consult them. Do you understand that also?

PROS: Am I correct that your attorney is outside the Grand Jury room? And his name is Andrew Lawler?

INTERP: Sorekara ano, anatano bengoshisanga, kono sotoni orareruto yu kotomo
それから。あの。あなたの 弁護士さんが。この 外に おられるということも。
tashika desune. bengoshisan no namaewa Andrew Lawler san desuka?
確かですね。 弁護士さんの 名前は アンドリュー・ローラー さん ですか

OUR TRANSLATION: It's certain that, uh, your attorney is outside this room, isn't it? And is his name Andrew Lawler?

WITNESS: Yes.

INTERP: Yes.

WITNESS: Hai.
はい。

INTERP: Yes.

PROS: Finally, you should be aware that this Grand Jury is specifically looking into your conduct in connection with various violations of federal criminal law relating to tax matters.

INTERP: Sorekara, kono daibaishin dewa anataga renpoo seifuno zeikin ni kansuru
それから。この 大陪審 では あなたが 連邦 政府の 税金 に 関する
ikutsukano ihokooito yukotonitsuitemo choosani atsumatte orimasu. Sono kotowa
いくつかの 違法行為ということについての 調査に 集まって おります。 そのことは。
owakari desuka?
おわかりですか?

OUR ENGLISH VERSION OF INTERP'S JAPANESE:

Uh ... the meaning of what I had the honor of saying to you is that this Grand Jury will investigate whether or not you have done something like violating the tax laws. Is that obvious?

WITNESS: Watashi kojin ni taishite no desuka?
私 個人に。 対しての ですか?

INTERP: Does that, does that pertain to me in person...personally?

OUR TRANS: Concerning me, personally?

PROS: Yes, specifically pertaining to your conduct in connection with possible violations of federal criminal law. Do you understand that?

INTERP: Sorewa ano, renpoo seifuno zeikin ni kansuru keihooni tsuite anatano
それは. あの. 連邦 政府の 税金 に 関する 刑法に ついて あなたの
kojin no desune, kojin no ihookooi to yu imi desu. Mooshiageta imiwa owakari
個人の ですね. 個人の 違法行為 という意味です. 申し上げた 意味は おわかり
deshoo.
でしょうか

OUR ENGLISH VERSION OF INTERP'S JAPANESE:

That ... uh ... means your personal .. uh .. personal act of violation concerning the criminal laws related to taxes of the federal government. Would you say you understand what I've told you?

WITNESS: To yu kotowa, watashiga "tax" wo datsuzei shitatoka. soyu kotodesuka?
ということは. 私が タックスを 脱税したとか. そういうことですか.

INTERP: Does that mean that you are saying something like I have violated tax laws?

OUR ENGLISH VERSION OF WITNESS' JAPANESE: Does that mean something like I have evaded payment of taxes?

PROS: No, all I'm saying, Mr. Kamiyama, is that the Grand Jury is investigating whether or not you personally may have violated the tax laws. You understand that?

INTERP: Ano, watashiga mooshiageta imiwa kono Daibaishin ga desune, anataga zeihoono
あの. わたしが. 申しあげた 意味は. この 大陪審 がですね. あなたが 税法の
ihookooi nadowo nasattaka dooka toyu kotowo choosa surutame desu. Sono kotowa
違法行為 などを. なさったか どうか ということを 調査するためです. そのことは.
meihaku deshoka?
明白 でしょうか.

OUR ENGLISH VERSION OF INTERPRETER'S JAPANESE: Uh, the meaning of what I said to you is that [the Grand Jury] will study whether you have kindly taken actions like the violation of tax laws. Is that clear?

WITNESS: Zeihooni taishiteno ihan desune?
税法に 対しての 違反 ですか。

INTERP: Once again, does that pertain to my possible violation of the tax laws?

OUR ENGLISH OF WITNESS' QUESTION:

A violation toward tax laws?

PROS: Our looking into your possible violation. Yes.

INTERP: Soyu imi desu. Anataga, ma, hyotto shite zeihoono desune, ihookooiga attakamo shirenai toyu kotoni tsuite, daibaishinga sorewo choosa shite imasu.
そういう意味です。あなたが、ま、ひょっとして 税法のですね、違法行為が あったかもしれないということについて、大陪審が それを。調査しています。

OUR ENGLISH VERSION OF INTERP'S JAPANESE:

That's the meaning. At present, the Grand Jury is studying whether there might have possibly been acts of violation of tax laws on your part.

PROS: Do you understand that?

INTERP: Sono kotowa ...
そのことは…

OUR ENGLISH VERSION OF ~~PROS~~ interpreter's Japanese: About that...

WITNESS: Hai, wakarimashita.
はい わかりました。

INTERP: Yes. it is clear.

OUR TRANSLATION: Yes, I understand.

PROS: Finally, Mr. Kamiyama, if you should give a false answer or fail to testify completely and truthfully in response to the question that I ask you, you could be charged with a separate criminal violation for perjury or obstruction of justice. Do you understand that?

INTERP: Sorekara honjitsumo shitsugi ootoode desune, ee, kyogino kotae aruiwa
それから 本日の質疑応答でですね、ええ虚偽の答 あるいは
shogenwo okotaru toyu kotoga arimashitanaraba, bettoni desune, keiho ni moto-
証言を 怠る ということがありましたならば。別途にですね、刑法にもと
zuita, anatawa hinan sareruto yu kanoosei ga arimasu.
ずいて、あなたは非難されるという可能性があります。

OUR ENGLISH VERSION OF INTERP'S JAPANESE:

And now, about today's questions and answers, if there should be a false answer or acts of negligence in testifying, there are possibilities that you may be blamed separately in light of the criminal laws.

WITNESS: To yu kotowa zeihoode nakushite...
ということは税法でなくして…

INTERP: Does that mean that on top of, or apart from the tax laws?

OUR ENGLISH VERSION OF WITNESS' JAPANESE:

That means not the tax laws, but ... ...

PROS: That's correct. If you should testify falsely...

INTERP: Anoo... (Uhh...)
あのう…

WITNESS: To yu kotowa.. (That means...)
ということは…

INTERP: Shogen wo,... shogen wo....ooo...magetari shitara...
証言を… 証言を… を… 曲げたりしたら…

OUR ENGLISH VERSION OF INTERP: [If] the testimony.... the testimony... is distorted...

WITNESS: Toyu kotowa, gishoozai ni towareru... toyu koto desune?
ということは、偽証罪に問われる…ということですね。

INTERP: Does that mean once again that I shall be charged for ...uhh... trying to find the right word ... uhh ... all right, fraudulent answers, or fraudulent, well, negligence of ... uhh, testimony, or ...

OUR ENGLISH VERSION OF WITNESS:

Meaning ... I'll be charged with ... perjury?

PROS: If you should knowingly and willfully give a false answer to the Grand Jury, that is a separate crime.

INTERP: Anoo, shiritsutsu desune, ee... gishoo shitari, aruiwa aa... shogen wo magetari
あのう 知りつつ ですね ええ 偽証 したり あるいは ああ 証言を 曲げたり
toyu kotowa tsumi ni ataisuru kotoni narimasukara soyu imi desu.
という ことは 罪に 価いする ことに なりますから そういう意味です

OUR ENGLISH VERSION OF INTERPRETER'S JAPANESE:

Uh ... knowingly, you know ... eee ... the meaning is that the act of making false statements, or ... aaa ... twisting your testimony, can become comparable to committing a sin.

PROS: Do you understand that?

INTERPRETER: Sorewa meihaku deshoka?
それは、明白 でしょうか？

OUR TRANSLATION OF ~~PROS~~ interpreter's Japanese: Is that clear to you?

WITNESS: Hai, Wakarimashita. (Without waiting for interpreter.)
はい わかりました。

(INTERPRETER did not translate/ not heard on tape.)

OUR ENGLISH VERSION OF WITNESS: Yes, I understand.

SESSION 2

(?): Under oath?

FOREMAN: The witness is still under oath.

INTERP: Sakihodono senseiga imademo, ano yukoo desukara sakihodo nasatta senseidesune.
先ほどの宣誓が 今でも あの有効ですから、先ほど なさった
宣誓ですね

OUR ENGLISH VERSION OF INTERPRETER'S JAPANESE: The previous oath is still uh, effective, the oath you took earlier.

WITNESS: Ha.
は

(INTERPRETER did not translate/ not heard on tape.)

(The 5th Amendment is not mentioned by the Prosecutor.)

(No warning of perjury provided by PROSECUTOR.)

LUNCH BREAK

7.9.'81
SESSION 3

FOREMAN: Mr. Kamiyama, you are still under oath.

INTERP: Ano, sakihodo no sensei ne, mada yukoo desukara.
あの、さきほどの宣誓は、まだ有効ですから。

OUR ENGLISH VERSION OF INTERPRETER'S JAPANESE: Uh, the earlier oath is still effective.

WITNESS: Hai.

INTERP: Yes.

OUR TRANS: Yes.

(No warning of perjury nor explanation of Fifth Amendment provided by PROSECUTOR.)

7.9.'81
SESSION 4

PROSECUTOR: Would you remind the witness he's under oath?

FOREMAN: Still under oath, Sir.

INTERP: Ano, sakki no sengen wa mada yukoo desu
あの、さっきの宣誓はまだ有効です。

OUR ENGLISH VERSION OF INTERPRETER'S JAPANESE: Uh, the earlier oath is still effective.

WITNESS: Yes.

(INTERPRETER did not translate.)

(No warning of perjury nor explanation of Fifth Amendment provided by PROSECUTOR.)

July 16, 1981

MORNING
SESSION 1

FOREMAN: You do solemnly swear that the testimony you are about to give to this Grand Jury in the matter now pending before it shall be the truth, the whole truth, and nothing but the truth, so help you God.

INTERP: Konotabi daibaishin de desune, iroiro chinjutsu shite
このたび 大陪審 で ですね、いろいろ 陳述 して
itadakukoto, sankoonin to shite, korewa moo, subete, shinjitsu
いただくこと、参考人 と して これは もー、すべて 真実
nomiwo tsutaete itadakimasu.
のみを 伝えて いただきます。

OUR ENGLISH VERSION OF INTERPRETER'S JAPANESE: At this time before the Grand Jury, that you will (kindly) state as witness, the various things we would of course like to have you state only the truth.

WITNESS: Yes.

(INTERPRETER did not translate/ not heard on tape.)

PROSECUTOR: I advised you of your rights last week before the Grand Jury, and I am not going to repeat them at this time except to advise you that if you answer any question that I put to you falsely, you should be aware that that is a seperate federal crime. It has nothing whatsoever to do with ... ... and you can be prosecuted separately for that crime.

You understand that?

INTERP: Zenkai anatano jinkenni tsuite gosetsumei shitanode
前回 あなたの 人権に ついて ご説明 したので
kurikaeshimasen keredomo chinjyutsu no nakade kyogi no kotae
くり返しません けれども 陳述 の 中で 虚偽 の 答、
aruiwa chinjyutsuga atta bawai korewa ima kono ken igaidemo
あるいは 陳述が あった 場合 これは 今 この 件 以外でも
anatani totte furina zaijyooni naruto yuyoona kotoga arimasukara,
あなたに とって 不利な 罪状に なると いうような ことが ありますから、
maa chuumoku shitekudasai.
ま Daa 注目 ちゅうもく して ください。

OUR ENGLISH VERSION OF INTERP'S JAPANESE:

Last time I explained about your rights so I will not repeat them again, but in case a false answer or statement is given, it may so happen that it sometimes becomes a guilt other than this and disadvantageous to you. So, in any case, please pay attention.

PROSECUTOR: Am I correct that your attorney is outside the Grand Jury room?

INTERP: Ee, bengoshi-san ga sotoni orareruto yuukotomo tashika desune.
ええ、弁護士さんが 外に おられると いうことも 確か ですね。

OUR ENGLISH VERSION OF INTERPRETER'S JAPANESE:

> And uh... eee ... it is certain that (your) attorney is standing by outside, isn't it?

WITNESS: Hai wakarimashita.
はい、わかりました。

INTERP: That is correct.

OUR ENGLISH VERSION OF ~~INTERP's~~ witness' JAPANESE:

Yes, I understand.

WITNESS: Roiyaa kara desune, koreo itta hooga iito yuukoto nandesune.
ロイヤーから ですね。 これを いった方が いいと いうこと なんですね。

INTERP: My attorney counseled me to read this out.

OUR ENGLISH VERSION OF INTERP'S JAPANESE:

> My lawyer told me that it would be better that this statement is made.

WITNESS: watashiwa senjitsu shihooshooni teishutsu shite koojyutsusho no naiyooni kansuru shitsumon ni kotaeru jyunbi wo shite mairimashita. Shikashinagara watashiwa konkaino choosano taishooto natteiru honninde arimasunode kenpoo de hoshoosareteiru watashino kenrini kanshitewa korewo hojisuru shozondesu.
私は 先日 司法省に 提出した 供述書 の 内容に 関する 質問に 答える準備を して参りました。 しかしながら 私は 今回の 調査の 対象となっている 本人で ありますので 憲法で 保障されている 私の 権利に 関しては これを 保持する 所存です。

INTERP: I am prepared to answer questions dealing with information contained in the affidavit which I submitted to the Dept. of Justice. However, since I'm a target of this investigation, I wish to reserve the right to claim my constitutional privileges with respect to other questions.

OUR ENGLISH VERSION OF ~~INTERPRETER'S~~ witness' JAPANESE:

I have done the preparations in order to answer the questions concerning the content of the affidavit submitted to the Department of Justice the other day. However, as I am the person who is the object of the investigation this time, I would like to maintain my rights guaranteed by the Constitution.

PROSECUTOR: At any time, Mr. Kamiyama, that I ask you a question and you want to invoke your 5th Amendment privileges, please feel free to do so, if you like.

INTERP: Sorekara ano watashiga goshitsumon shiteiru tokimo
それから あの 私が ご質問 しているときも
desune, ee, ma, daigo, daigojoono ano kaiteisareta koomokuni yotte anata wa
ですね、ええ、ま、第五、第五条の あの 改訂された 項目に よって あなたは
hogosarete imasukara soreo anataga tsukawareru kotowa anatano
保護されて いますから それを あなたが 使われる ことは あなたの
kenridesu.
権利です。

OUR ENGLISH VERSION OF INTERP'S JAPANESE:

And when I am asking you a question, well ... uh ... you are protected by the revised item of the 5th article, and therefore it is your right to use it.

WITNESS: Hai, Wakarimashita.
はい わかりました。

SESSION 2

INTERP: Yes, it's clear.

OUR ENGLISH VERSION OF WITNESS:
Yes, I understand.

(No record of oath on tape.)
(No warning of perjury nor explanation of Fifth Amendment provided by PROSECUTOR.)

LUNCH BREAK

SESSION 3

PROSECUTOR: Would you remind the witness that he is still under oath?

FOREMAN: Would the witness and the interpreter please remember you're both still under oath, as of this moment.

INTERP: Ee, tsuuyaku mo shonin mo, anu, sakihodono sensei wa mada
えー、通訳も 証人も あの、先程の 宣誓 は まだ
yuukoodesukara.
有効ですから。

OUR ENGLISH VERSION OF INTERP: Uh, [for] the interpreter and the witness, uh, the earlier oath is still effective.

WITNESS: Hai, wakarimashita.
はい 分かりました。

(intepreter did not translate)

OUR ENGLISH VERSION OF WITNESS: Yes, I understand.

(No warning of perjury nor explanation of Fifth Amendment provided by PROSECUTOR.)

Morning

PROS: Now, Mr. Kamiyama, this is the third time that you've appeared before this Grand Jury on this matter.

INTERP: Konkai, Dai Baishin ni desune, shuttei shite itadaita, dai
今回、大陪審にですね、出廷していただいた、第三回目に
sankaime ni narimasu.
なります。

OUR ENGLISH VERSION OF INTERP'S JAPANESE:

This time,...it is the third time we have asked the honor of having your presence at the Grand Jury.

PROS: And, am I correct that your attorney is outside the Grand Jury room?

INTERP: Ano, anatano bengoshisan wa sokoni irasshai masuka?
あのー、あなたの弁護士さんは そこに いらっしゃいますか？

OUR ENGLISH VERSION OF INTERP'S JAPANESE:

Uh..., is your attorney there?

WITNESS: Hai.
はい。

INTERP: Yes.

OUR ENGLISH VERSION: Yes.

PROS: And, that's Mr. Lawlor?

INTERP: Sorewa, ano, Loolaa san desune?
それは、あの、ローラーさんですね。

OUR ENGLISH VERSION OF INTERP'S JAPANESE:

That's,..uh...Mr. Lawler?

WITNESS: Soodesu. Hai.
そうです。はい。

INTERP: That's correct.

OUR ENGLISH VERSION OF INTERP:

That's correct, Yes.

PROS: And you understand that this Grand Jury is presently investigating violations of criminal tax law as well as other matters, including, uhh ... and is specifically also investigating your own conduct as well.

INTERP: Anoo, too Baishinwa desune, ee ... zeihoono ...oo.. ihan ga
あのー 当陪審はですね。えー。税法の。おー。違反があった
attakamo shirenai toyuyona koto, aruiwa, anatano kooi, koodoo nado
かも しれない というようなこと。あるいは。あなたの行為。行動など…
ni tsuitemo, iroirona choosa wo surukotoni shite imasu.
についても。いろいろな調査をすることにしています。

OUR ENGLISH VERSION OF INTERP'S JAPANESE:

Uh... this Grand Jury, as you know, ... is to make various studies on ... ee ... tax laws ... ooo ... on the matter of possible violations or about your action and behavior.

WITNESS: (Answer not heard on tape.)

INTERP: Yes.

No record of oath in the tape. Begins with witness giving his name.

PROSECUTOR: And let me again repeat to you what I mentioned to you at both prior sessions, that if you should give any false answer to any questions that are put to you, that's a separate federal crime, and you can be prosecuted for that.

INTERP: Ano zenkai nikai gosetsumei itashimashita keredomo, ano,
あの。前回。二回 ご説明致しましたけれども。あの
kyogino chinjutsu o nasaimasuto sorewa zenzen aratana, mata,
虚偽の陳述をなさいますと。それは全々新たな、又、
anoo, zaijyoo to narimasukara.
あの 罪状となりますから。

OUR ENGLISH VERSION OF INTERP'S JAPANESE:

Well. Previously, twice I explained (to you), but ... uh ... if you should make a false statement, because it will become a wholly new ... well ... guilt ...

(Witness' reply cannot be heard on tape: 7.21.'81, Side 1)

(No explanation of Fifth Amendment provided by PROSECUTOR.)

BREAK

PROS: Would you please remind the witness that he is still under oath?

FOREMAN: You are under oath still.

INTERP: Anoo, sensei wa mada yukoo desu kara.
あのう. 宣誓はまだ有効ですから

OUR ENGLISH VERSION OF INTERP: Uhh. the oath is still effective.

WITNESS: Yes. (replies in English.)

(INTERPRETER did not translate/ not heard on tape.)

(No warning of perjury nor explanation of Fifth Amendment provided by PROSECUTOR.)

LUNCH BREAK (until 2 p.m.)

7.21.'81 Session 3

FOREMAN: Do you solemnly swear to the testimony that you are about to give to this Grand Jury in the matter now pending before it shall be the truth, the whole truth, and nothing but the truth, so help you God.

INTERP: Tadaima daibaishin de shite itadaku shoogenwa subete
ただいま、大陪審でして頂く証言は、すべて
shinjitsu nomio katatte itadakimasu.
真実のみを 語って 頂きます.

OUR ENGLISH VERSION OF INTERP: Right now, well, the testimony that we would like to have you give at the Grand Jury, we would like you to speak wholly the truth only.

WITNESS: Hai, Wakarimashita.
はい わかりました

INTERP: Yes.

OUR ENGLISH VERSION OF WITNESS: Yes, I understand.

SESSION 4

PROSECUTOR: I am asking you a question, Mr. Kamiyama. If you want to refuse to answer them, you can refuse to answer questions, but you have to answer whatever question I ask you. If you want to refuse to answer them, and excericse your 5th Amendment rights, you can.

7.21.'81 Session 4

INTERP: Ima shitsumon wo anatani muketeimasu keredomo, dooshitemo
今、質問を あなたに向けていますけれども、どうしても
anataga kyozetsu nasaru naraba, anoo, dai gojyoono desune,
あなたが拒絶なさるならば、あの、第五条のですね、
shuusei, maa shuuseihoo desuka, niyotte anatawa kyozetsu suru
修正、まー、修正法ですか、によって あなたは拒絶する
kenriwa arimasu. Shikashi, ee, goshitsumon shitakotowa narutake
権利はあります。しかし、えー、ご質問したことは、なるたけ
kotaete itadakitaito omoimasu.
こたえていただきたいと思います。

OUR ENGLISH VERSION OF INTERPRETER'S JAPANESE:

Now, I am directing my question to you, but if you will insist on refusing ... well ... the 5th article, you know ... amended ... well ...something like an amended law, is it? According to that, you have the right to refuse. However, uhh ... we would like you to answer that we have asked you as much as possible.

(WITNESS' voice not recorded on tape.)

(No warning of perjury provided by PROSECUTOR.)

PROS: Thank you, Mr. Kamiyama.

(End of Tape: 7.21.'81. Side 5.)

SUPPLEMENTAL EXHIBIT 1

DECLARATION OF JOHN HINDS

John Hinds declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am an associate professor, Department of Speech Communication, at Pennsylvania State University. I am fluent in Japanese, and have devoted much of my professional career to the study of Japanese linguistics. My professional qualifications are set forth in more detail in the accompanying curriculum vitae (Exhibit A), which is incorporated herein by reference.

2. At the request of counsel for Takeru Kamiyama respecting United States v. Kamiyama, 81 Cr. 705 (GLG), 82 Cr. 194 (GLG) (S.D.N.Y.), I have listened to the tape recordings of the testimony of Mr. Kamiyama before the grand jury on July 9, July 16 and July 21, 1981, for the purpose of translating the questions asked of Mr. Kamiyama and the answers he gave. I have also compared the version of the testimony given by the interpreter who was in the grand jury with the translations I have prepared. For the reasons set forth in more detail below, I have determined that the translations contained in the indictment are highly inaccurate and do not approach the standard of care that should be expected even of a reasonably competent interpreter, much less that which would be expected of a competent translator.

3. As used in this declaration, interpretation refers to the process of orally converting one language into another at the same time or at approximately the same time as it is spoken. There are two kinds of interpretation. The first, called simultaneous interpretation, is used at the United Nations. An interpreter listens to a few words in the speaker's language then interprets them into a second language, while the speaker continues to talk. The interpreter (who cannot be heard by the speaker) then continues to translate throughout the speech. The

second, called consecutive interpretation, is more typically used in courtroom and grand jury settings. The consecutive interpreter listens to a complete thought of the speaker--often several sentences. Then, while the speaker waits, the interpreter converts the sentences into the second language. Translation, as used in this declaration, also refers to the conversion of one language into another, but with more opportunity for reflection and reference to dictionaries. Translation may be done either from a tape-recorded statement or from written materials.

4. The consecutive interpretation from one language to another is a task of great difficulty. The apparent fluency of a handful of the best interpreters may well disguise the perils which faced the interpreter who acted for the grand jury. As noted by Farb, most people assume that a text in one language can be accurately translated into another language so long as the translator uses a good bilingual dictionary, but that is not so because words that are familiar in one language may have no equivalent usage in another." (Peter Farb, Word Play: What Happens When People Talk (New York: Knopf, 1973), 224.) Although a large number of examples of words which do not translate easily from one language to another may be found, this does not really get at the heart of the difficulty. Typically, languages code grammatical information and thought processes in different ways. For instance, the Japanese verbal system requires only a distinction between past and non-past tense or between completed and non-completed aspects rather than the three-way system of English which requires past, present, and future. The expression benkyoo suru, for instance, may be translated as either "I will study" or "I study (habitually)," depending on context. Additionally, subjects and objects are frequently omitted from an utterance if the speaker assumes the listener can tell who and what is being spoken about. While this system works reasonably well, there are large number of expressions in which the speaker may have misjudged the listener's ability to comprehend a subject

or object (See John Hinds, Ellipsis in Japanese (Alberta: Linguistic Research, Inc., 1982).)

5. Farb sums up the situation when he says, "No matter how skilled the translator is, he cannot rip language out of the speech community that uses it. Translation obviously is not a simple two-way street between two languages. Rather, it is a busy intersection at which at least five thoroughfares meet, the two languges with all their eccentricities, the cultures of the two speech communities, and the speech situation in which the statement was uttered." (Farb, Word Play, 226.)

6. This difficulty in translating one language into another with a high degree of accuracy has been recognized for some years by linguists. Benjamin Lee Whorf, a noted linguist, has stated: "Actually, thinking is most mysterious, and by far the greatest light upon it that we have is thrown by the study of language. This study shows that the forms of a person's thoughts are controlled by inexorable laws of pattern of which he is unconscious. These patterns are the unperceived, intricate systemizations of his own language, shown readily enough by a candid comparision and contrast with other languages, especially those of a different linguistic family. His thinking itself is in a language, in English, in Sanskrit, in Chinese. And every language is a vast pattern of systems different from others in which are culturally ordained the forms and categories by which the personality not only communicates but also analyzes nature, notices or neglects types of relationship and phenomena, channels his reasoning, and builds the house of his consciousness." (Benjamin Lee Whorf, Language, Thought, and Reality, Selected Writings of Benjamin Lee Whorf, ed. J. B. Carroll (New York: Wiley, 1956), 252.)

7. We are thus capable of finding any number of works which deal with the general problem of interpretation or translation from one language to another. When the situation is such that precision of expression is required, it becomes extremely

important to look at all of the nuances which exist between the two versions of a given thought which occur in the original and translated languages.

8. In addition to general problems of translation or interpretation that may exist between any two languages, there are a number of specific problems which exist in the interpretation from Japanese into English or from English into Japanese. Saito discusses the specific difficulty involved with conference interpretation. "It is believed by some that anyone who has a facility in two languages, Japanese and English, can easily succeed as a conference interpreter. This is not the case. Interpretation requires many communication skills for interpreting involves social interaction. Of course, he must have a knowledge of languages, but this in itself is not enough. He must also be able to understand the content of what is being said. He must know the semantic aspects of language, and he must have an awareness of himself as a middleman between persons of different cultural background. Thus, he must understand that behind differences in language are differences in thought patterns, value systems, customs, and ways of responding to symbols and people." (Mitsuko Saito, "International Conference Interpretation," in Intercultural Encounters With Japan, eds. John C. Condon and Mitsuko Saito (Tokyo: Simul Press, 1974), 100-01.)

9. It is appropriate, then, to inquire into the background and qualifications of a court-ordered interpreter. It has been noted that in 1975 there were fewer than a dozen universities in the world which teach interpretation and translation. (John C. Condon and Fathi Yousef, An Introduction to Intercultural Communication (New York: Bobbs Merrill, 1975).) The scarcity of training programs stems from the mistaken idea that interpretation is simply the transfer of words in one language to the words in another. Accurate interpretation is an extremely difficult endeavor, and Condon and Yousef spend most of a chapter attempting to demonstrate that precise interpretation requires the highest

degree of skill. The specific difficulty of translating from Japanese into English or English into Japanese has been recognized by a number of linguists. Professor Komatsu, the Executive Director of Simul International, Inc., in Japan, has stated: "We feel the differences between English and Japanese may be much wider and greater than those between, say, English and French or English and German, making our job between English and Japanese much more formidable than that among European languages." Intercultural Encounters With Japan, 220 (comments of Tatsuya Komatsu). Perhaps the greatest problem in interpreting between Japanese and English is the difficulty involved with vagueness. Seward discusses what he terms the "virtue" of vagueness in Japanese. He states that "a major difficulty with 'yes' and 'no' answers in Japan is that the Japanese are fundamentally against them. They regard vagueness as a virtue." (Jack Seward, Japanese in Action (New York: Weatherhill & Co., 1973), 36.)

10. This propensity for vagueness has been investigated from a number of linguistic perspectives. The topic is discussed, for example, in Hinds, Ellipsis in Japanese. This work demonstrates and elucidates the high percentage of subjectless sentences in Japanese and the fact that many utterances simply do not have an overt, discernible subject.

11. In searching for an explanation for the matter of vagueness in Japanese one is struck by the fact that there are certain organizational parameters in Japanese that are considerably different from organizational parameters in English. The realm of activity in which such matters are investigated is termed language typology. Typically, language typologists investigate whether a language prefers subject constructions or topic constructions; whether it is a verb final language, like Japanese, or a verb medial language, like English. One particular typological parameter that has been investigated is the matter of "situation-focus" languages as opposed to "person-focus" languages. Tazuko Monane and Lawrence Rogers, "Cognitive Features

of Japanese Language and Culture and their Implications for Language Teaching," in Japanese Linguistics and Language Teaching: Proceedings of the Second HATJ-UH Conference on Japanese Language and Linguistics, ed. John Hinds (University of Hawaii at Monoa, Honolulu: Hawaii Association of Teachers of Japanese and Department of East Asian Language, 1977). Monane and Rogers additionally discuss two further parameters, the first being "existence focus," as in Japanese, as opposed to "possession focus," as in English. The third parameter is "indirect expression" versus "direct or specific expression."

12. In order to illustrate the distinction between situation focus and person focus, they ask us to reflect on what is done when one hears shouting. In English, the typical way of expressing this is to say "I just heard some shouting," in which the person-focus construction is required. That is, the subject "I" is required. In Japanese, on the other hand, the typical expression is sakebigoe ga shita yo, which may be translated as "The shouting occurred." Another example is what happens when one sees a mountain from the window of a train. Typically, English speakers say "I see a mountain," whereas in Japanese the expression is yama ga mieru, literally "the mountain can be seen." Their point is that English normally requires a person to be the subject of a sentence, whereas in Japanese, such requirements do not exist. It is enough simply to postulate the existence of a situation.

13. The second distinction they discuss is between existence focus in Japanese and possession focus in English. Their examples include the fact that in English we say "I have a fever." In Japanese, the corresponding expression is netsu ga aru, literally, "A fever exists." In English, we say "I have some money." In Japanese, the corresponding expression is okane ga aru, "Money exists." A final example: In English we say "He's got no education" (possession focus), as opposed to Japanese,

kyooyoo no nai hito da, "A person to whom education does not exist" (existence focus).

14. Finally, they discuss indirect expression in Japanese and direct expression in English. In English, we say directly, "I think it is no good." In Japanese, the corresponding expression is yoku nai ja nai ka to omotte imasu, "I think perhaps it's not so bad."

15. The point behind all of these examples is that, added to the general problems of translation between any two languages, we have a specific problem with respect to Japanese. First there is the cultural desire reflected in the language to be vague and, second, there is the difficulty encoded in the language that requires one to focus on a situation rather than a person. These together frequently lead to a lack of precision in the translation of one language to the other. This situation may be tolerated in casual conversation, but must be confronted and dealt with directly in a court of law where precision of statement is required.

16. A careful examination of the testimony given by Mr. Kamiyama that was identified as false demonstrates enough ambiguity as a result of improper or misleading translation to raise a serious and substantial question about whether Mr. Kamiyama's answers were shown to be falsehoods.

17. In listening to the tapes of the grand jury testimony, I found many differences between what is reported to have been said and what was in fact said. Following are several quotations found in the indictment, which I have marked with corrections.

Count 10

> He never wrote anything other than his (own) signature as far as I remember. [In parenthesis --not on tape.]

Count 11

> Q. And where did you get the money, that four hundred thousand dollars, to deposit (in Reverend Moon's account)? [In parenthesis-- not on tape.]

> Q. And where was the money actually at (that) time before you deposited it into (these accounts)? [Indictment says "the" time and "into Moon's account."]
>
> Q. (Well, where did the four hundred thousand dollars)--how did you get the four hundred thousand dollars that (was) deposited in (Reverend) Moon's account?
>
> [First parenthesis not heard on tape; second parenthesis says "you" in indictment; third parenthesis says "into Moon's account" in indictment.]
>
> Q. Was any of the money in the family fund ever used to pay expenses for the Japanese members who had come to (America)? [Indictment says New York.]

18. I will begin my analysis of the grand jury testimony of Mr. Kamiyama with general comments. There are any number of mistranslations by the grand jury interpreter. Even if some of the mistranslations could be explained by the pressures of consecutive interpretation, the statements are nevertheless not an accurate rendition of what was said.

19. The types of errors the interpreter made may be categorized. References to the testimony are made to the charts attached hereto as Exhibit B, and described below in this declaration. Some references, marked "M.K.", are to the translations done by the court-appointed translator M. Kosaka which are Exhibit B to the Declaration of Anafu M. Kaiser in this matter.

20. One type of error derives from the fact that the interpreter's speech contains expressions and constructions which are inappropriately casual for a legal proceeding. These expressions and constructions give the impression of a relaxed, informal conversation rather than of a proceeding in which every word is to be examined for its significance.

Some examples of inappropriate English usage are:

a. Count 9: (M.K. p.3) use of "nitty-gritty." (American Heritage Dictionary of the English Language (New York: Dell, 1969) labels this "slang.")

b. Count 12: (M.K. p. 29) lack of overt subject in English "might have been." (R. Thrasher, "Shouldn't Ignore These Strings: A Study of Conversational Deletion" (University of Micnigan Ph.D Dissertation, 1974.)

21. The grand jury interpreter's casual use of Japanese started with the administration of the oath to Mr. Kamiyama. The traditional legal oath ("Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?") has no very exact Japanese analogue. However the interpreter rendered it in very casual and tentative language, considering its importance and formality. A good translation of the words heard by Mr. Kamiyama in lieu of the oath would be "As for this case I think [indicated by the casual conversational marker desu ne] I would like to have you report the truth and only the truth." Some other examples of overly casual Japanese usage are (paras. 22-23):

22. Incomplete questions: (John Hinds, "Interrogatives in Japanese," in Interrogativity, eds. W. Chisholm and L. Milic (Dordreht: John Benjamin, 1982).

a. Count 9: (M.K., p. 6) . . . Kotowa?

b. Count 10: (M.K., p. 11) anata ga?

c. Count 10: (M.K., p. 12) . . . sensei ga?

23. Nominal elements put after the verb. (See Hinds, Ellipsis in Japanese; J. Shibamoto, "Language Use and Linguistic Theory: Sex-Related Variation in Japanese Syntax" (University of California at Davis, Ph.D Dissertation, 1980) for statements which say this construction is a relaxed, conversational style.)

a. Count 11 (Exhibit B, p. 22, Item 2): no family fund.

b. Count 11: sono 40-mandoru, tsumitateru sunzen ni wa?

c. Count 12 (M.K., p. 27): shi wa?

24. The second type of error the interpreter made is that a

large number of his statements in English are ungrammatical. The following representative list shows grammatical errors no native speaker of English would make. (See J. Schenkein, ed., Studies in the Organization of Conversational Interaction (New York: Academic Press, 1979), for a description of native English speaker conversational disfluencies).

a. Count 10 (M.K., p. 12):

"As I said, I made a request, but when in the act of somebody opening the bank account, I was not present."

b. Count 9 (M.K., p. 8):

"The transaction was done under (a) letter of credit." [I have inserted the necessary indefinite article.]

c. Count 9 (M.K., p. 8):

"I haven't reached the United States when Oyama gave money to . . . " [Hadn't is the required auxiliary.]

d. Count 9 (M.K., p. 9):

"I didn't hear (it) when I was in Japan." [I have inserted the required direct object.]

e. Count 11 (M.K., p. 19):

"Perhaps I could have asked Matsuzaki, but (I am) not sure." [I have inserted the required subject and copula. "But not sure" was not transcribed on the M.K. transcript.]

f. Count 11 (Exhibit B, p. 17, Box 4E):

"From (the/a) Family Fund." [I have inserted the required article.]

g. Count 11 (Exhibit B, p. 18, Box 4E):

"I wasn't physically in charge for that fund." [For is not permitted to substitute for of.]

h. Count 12 (M.K., p. 29):

"Might have been." (Correct version "It might have happened.")

i. Count 12 (M.K., p. 35):

"I did not even consider (putting) it into Reverend Moon's name." (I have inserted the necessary verb.)

25. These examples can be greatly multiplied. Their significance is that they are all instances of negative transfer

from Japanese. This indicates clearly that the grand jury interpreter is dominant in Japanese.

26. Jean Herbert, The Interpreter's Handbook (Genève: Librairie de l'Université, Georg & Cie S.A., 1952), 14-15, provides the following guidelines for an interpreter:

> A thorough knowledge of the language from which he translates is for the interpreter an absolute requirement. The interpreter who agrees to translate a speech given in a language which he has not mastered is at fault, even if he does so only exceptionally and with the best of charitable intentions. Any departure from this rule is likely to have most regrettable consequences. . . . Mastery of a language implies more than a full knowledge of its vocabulary and its grammar.

27. The grand jury interpreter has shown that he has not even mastered English vocabulary and grammar, let alone possessed the other attributes of an effective interpreter.

28. The third type of error is that the grand jury interpreter did not control the respective vocabularies of the two languages well enough to convey meanings accurately.

a. Count 9 (M.K., p. 20):

"Rev. Moon is linked with the activities."

Linked in English is used to "link one figure in crime with an organization"--the corresponding Japanese expression only equates Rev. Moon with the activities; it does not "link" him.

b. Count 11 (M.K., p. 20):

"It's impossible that he goes there alone."

The Japanese construction "Kare hitoriude iku wake nai ja nai desu ka ne," is best translated as "There's no reason for him to go alone, is there?" That is, while there is no reason for Rev. Moon to go alone, it is not impossible for him to go alone.

29. This section of the analysis has focused on the deficiencies of the grand jury interpreter. Consecutive interpretation at a minimum requires a high level of ability in both languages being translated. While the grand jury interpreter appears to control Japanese with native-like facility, his command

of English is far less fluent, and, in fact, seriously flawed. Because the interpreter has been shown to distort the intent and nuances of both Mr. Plumenbaum and Mr. Kamiyama with considerable frequency, I do not believe the interpreter's utterances are generally accurate expressions of either Mr. Plumenbaum's or Mr. Kamiyama's words or intentions.

30. In this section I will comment specifically upon those sections which were the basis of the charge of perjury against Mr. Kamiyama. At the outset, it must be noted that simply because a given sentence does not contain a subject in Japanese does not necessarily mean that the sentence is completely vague or ambiguous. I have stated two rules of interpretation for how to interpret a sentence which does not contain a specified subject. (John Hinds, 1980, "Japanese Conversation, Discourse Structure, and Ellipsis," Discourse Processes, 3: 263, 278.) The first rule is that the referent of an ellipted item is assumed to be a paragraph topic or subtopic which is compatible with the markers of the propositional verbal associated with the ellipted item. In the event that this rule does not apply, a second rule obtains, that the ellipted subject of a declarative sentence is the speaker, while the subject of an interrogative or imperative sentence is the addressee. This second rule, in particular, will be relevant to some of the discussion which follows.

My own transcriptions, translations, and interpretations have of necessity evolved in the time I have examined these transcripts and tapes. These developments must be seen as successive refinements. To the extent that there are differences between the declaration I submitted in connection with the motion for new trial and this declaration, this one is the more accurate. Most of the differences are in fact cosmetic and involve refinement. In this declaration, inconsistencies in romanization have been eliminated. As well, minor changes in exclamations and hesitations have occurred in order to maintain consistency.

There are a very few differences in translation between this document and the former. These differences as well are refinements based on continued research and reflection or on more concentrated listening to the grand jury tapes. This is a normal procedure when translating from a language like Japanese in which vagueness and ambiguity occur with great frequency.

This final form of translation owes considerable debt to the input of Mitsuko Saito and other Japanese language experts in Tokyo who have studied the transcripts and tapes involved here. (A curriculum vitae of Dr. Saito is attached hereto as Exhibit C.) It is my understanding that this final form has the approval of Dr. Saito.

31. All references below are to the diagrams attached as Exhibit B to this declaration, which are incorporated herein by reference. It should also be pointed out that in the transcript of the court-appointed translation the transliteration provided for both the interpreter and for Mr. Kamiyama are at times inaccurate. Many expressions and words are left out, many repetitions are not indicated, and certain expressions are transcribed incorrectly.

32. In preparing this declaration, I have examined the grand jury transcripts, the indictment, and the court-ordered translation (Exhibit B to the declaration of Anafu M. Kaiser), and have listened to the tape recordings of the grand jury proceedings. I prepared the charts which are attached as Exhibit B to this declaration, which contain relevant Japanese translations. They are accurate summaries of the question-and-answer interchanges they reflect.

33. Exhibit B is the chart of data including the grand jury transcript questions and answers and my translations listed as the correct translations. Each item on the chart has a number at the top right. References within this document refer to count numbers and Exhibit B page and item references. In the configuration for Count 1, the extra items provide for the work product of the

court-appointed translator. There is also a colloquy between the interpreter and the prosecutor which is not recorded in the indictment or the four-item charts.

34. Count 9 (Exhibit B, page 1):

> "Did Reverend Moon know that he owned stock in Tong Il, that the stock was in his name in Tong Il?"

The translated question (2) does not contain an expressed subject. In this context, although it is possible that (2) could be interpreted as (1), "Did Reverend Moon know he owned stock in Tong Il?", the utterance (2) is ambiguous in that it could also be interpreted to mean "Did you (i.e., Mr. Kamiyama) know that there are stocks in Tong Il in Reverend Moon's name?" This interpretation is possible because of the second rule listed in Hinds 1980 that the ellipted subject of a question may be interpreted to the addressee. The verb form that is used here, shitte oraremashita ka, is an honorific expression and the interpreter has consistently used honorific forms to refer both to the actions of Reverend Moon and to the actions of Mr. Kamiyama. So this does not help Mr. Kamiyama to interpret the subject of the verb "to know." Finally, it is not clear in (2) who it is who owns the stocks. It is clear that the stocks are in Reverend Moon's name, but this does not mean that they necessarily belong to him. There are other ambiguities as well. In particular, another interpretation of this utterance is that the stock in question is physically in the Tong Il office.

35. Count 9 (Exhibit B, page 2):

> "Did you tell Reverend Moon that you had issued 50,000 dollars worth of stock in his name?"

The end of the translation (2) was ohanashi o shita koto wa arimasu ka, in which, quite literally speaking, it is not clear who is involved in the conversation. (See Hinds, Ellipsis in Japanese; Monane and Rogers, "Cognitive Features in Japanese", 129-37.) In order to clarify this, it is necessary to insert the expression sensei to ("with Reverend Moon") in front of the word ohanashi. This at least expresses the meaning "Did you have such a conversation with Rev. Moon?" There is no sense in which the English expression "tell," (i.e., "Did you tell Rev. Moon something") is present in the Japanese translation. (2) is, as mentioned above with respect to Monane and Rogers' article, a situation focus. That is, in Japanese it is merely enough to put forth the fact that there is a conversation, not who is doing the talking. As well, although it is probable that Mr. Kamiyama was involved in the conversation, this is not certain. (1) asks if Mr. Kamiyama had told Rev. Moon that he, Mr. Kamiyama, had issued stock. Since the utterance is situation focused, it is not specified that Mr. Kamiyama issued any stock at all. This is because the verb aru (exist) merely specifies the existence of something rather than the activity of issuing.

The answer given by Mr. Kamiyama was a simple "No." The interpreter embellished the answer, however, by adding the phrase, "I never mentioned it." As a result, the indictment gave an impression that Mr. Kamiyama definitely denied he told Reverend Moon that Mr. Kamiyama had issued stock to him. But the actual answer carried far less weight than the interpreter's version suggested.

Another serious mistake in translation, which decisively changed the meaning of the original question, is the interpreter's reference to "there being stocks" instead of to the "issu[ance] of stock." Thus, the interpreter asks whether Mr. Kamiyama had talked with Rev. Moon about the existence of $50,000 worth of stocks in Rev. Moon's name. The existence of stock and the issuance of stock are two distinctly different matters. The question, referring to such a passive condition, is confusing and carries very little sense. The grand jury, however, believed that Mr. Kamiyama had given quite different testimony, that Mr. Kamiyama did not tell Rev. Moon that the former had issued stock.

36. Count 9 (Exhibit B, page 3): In (1), Reverend Moon is referred to with the pronoun him. In English this is completely unambiguous. In the translation, however, the verb hanashi-atta means only to have a conversation, and it does not specify who is in the conversation. A number of words appear in (4) which do not exist in (3): two of these are simply and like. Additionally the use of the word execute in (4) has implications that are not present in (3). Yarimashita means simply did.

37. Count 9 (Exhibit B, page 4):

> "Did Rev. Moon sign any documents in connection with his ownership of stock in Tong Il?"

The translation of the question is made vague by the interpreter's use of the word shorui ("document"). Involved here is an inherent ambiguity in the Japanese language. In Japanese, there is typically no distinction made between singular and plural, or between marking with definite and indefinite articles. Thus, the word shorui may be translated in six different ways: (a) a [certain] document; (b) the document; (c) any documents; (d) the documents; (e) some documents; (f) documents.

The translation (2), because it contains the expression sensei ga sain shinakya naranakatta shorui, actually says "[D]idn't the Reverend have to sign, on document(s) . . . ?" Therefore, the answer (3), arimasen, is merely negating the fact that the Rev. Moon had to sign any documents. It does not say anything whatsoever about whether Rev. Moon did sign documents.

38. The question (2) is asked in a negative form, an indication an affirmative response is required. This phenomenon is discussed in Seiichi Nakada, Aspects of Interrogative Structure: A Case Study from English and Japanese (Tokyo: Kaitakusha 1980, 127). Nakada states that a speaker of a "negatively conducive sentence" (such as Exhibit B, pages 35, (2); page 37, (2), as well as other places in the testimony not quoted in the indictment) "anticipates disagreement with the negativity

in it, i.e., he anticipates or presupposes an affirmative answer." Nakada generalizes to say:

> An affirmatively phrased question [such as Exhibit B, page 35, (1)] is susceptible of a negative answer by a 50-50 probability but . . . a negatively phrased question [such as Exhibit B, page 35, (2)] anticipates an affirmatively phrased answer by significantly more than a 50-50 probability.

39. (2) does not make it clear that Rev. Moon owns the stock, although this is stated in (1), "his ownership". To refer to the ownership of stocks as Kabu no shooyu without specifying who the owner is is to leave the utterance vague.

40. Count 9 (Exhibit B, page 5):

"And you never talked to him about it?"

We must now assume that the "it" in (1) refers to Rev. Moon's having to sign something. The response, (3), hanashimasen, "I didn't talk (about it)," can be assumed to mean that Mr. Kamiyama is talking about not speaking about Rev. Moon's having to sign something. Additionally, the Japanese expression jitsumuteki na koto is extremely ambiguous in that it may mean either everyday business activities or specific day-to-day activities.

Second, the ambiguity of the interpreter's question is further compounded in that it does not make it clear whose ownership of stock is asked about, or even whether the stock discussed here is Tong Il stock.

41. Count 10 (Exhibit B, page 6):

"Did Rev. Moon carry the checkbook with him?"

The question asked by the interpreter is somewhat confusing. The interpreter here uses the expression goissho ni. Without goissho ni, the question is a fairly good translation, but with goissho ni, it is confusing because goissho ni generally refers to the activities of human beings. That is, this expression is translated as "together with," meaning "with someone." (Kenkyusha's New Japanese-English Dictionary, ed. K. Masuda (Tokyo: Kenkyusha, Ltd., 4th ed. 1974.)) A better translation of

(2), then, although it turns out to be somewhat strange English, would be, "Does the Rev. Moon take the checkbook with you?" I should point out also that (1) asks "Did Rev. Moon carry the checkbook with him?", while the question (2) asks "Does he take this together with him (or you)." (Hatsuo Soga, Tense and Aspect in Japanese (Vancouver: University of British Columbia Press, 1982.) The response (3) is mistranslated as (4), "He doesn't because I managed it." A better translation is (3), "Because I managed it." That is, the question is not directly answered, and, just as in English, being in charge of something does not necessarily mean that one has the material in one's physical possession.

42. Count 10 (Exhibit B, page 7):

> "You carried the checkbook with you from the very beginning of the account,"

First, the question was disfluent and halting. Mr. Kamiyama hastily started to answer before the key word, mo(tte) ("car[ry]"), was pronounced completely by the interpreter. (In Japanese, the verb almost always appears at the end of the sentence.) As a result, the interpreter's redition of the question remained incomplete. It is probable to conclude from the interchange that Mr. Kamiyama did not properly understand the question, but took it to be a question about management. He simply reiterated his previous answer that he managed the checking account. He certainly did not respond to whether he actually had possession of the check book. It is apparent that Mr. Kamiyama used the loan-word kiipu-shimashita as synonymous with the native Japanese kanri shimashita since he says a bit later in his testimony, "As I said before, I managed [kanri shimashita] the checking account." (Tr. p. 46, lines 6-9.)

Second, the interpreter added the words "yes," "myself," and "from the beginning" to Mr. Kamiyama's response. Mr. Kamiyama responded to the question by saying, "That, I managed (it)." The interpreter translated this as, "Yes, I kept it myself, from the beginning." This translation gives the appearance of a direct and affirmative response to the question asked by Mr. Flumenbaum, but Mr. Kamiyama's response was neither direct nor clearly affirmative. Rather, Mr. Kamiyama responded only that he had managed the checking account.

41. Count 10 (Exhibit B, page 8). The major difficulty with this is that the translation (4) distorts Mr. Kamiyama's response. Mr. Kamiyama says he received a signature from someone, not necessarily Rev. Moon. (4), on the other hand, says he asked for a signature, which doesn't mean he received one. Additionally, it says he asked Rev. Moon for this signature, and this is not in Mr. Kamiyama's response.

42. Count 10 (Exhibit B, page 9): No comments of substance.

43. Count 10 (Exhibit B, page 10): The interpreter created confusion in terms of tense. Mr. Flumenbaum asked whether at some time in the past Reverend Moon wrote portions of a check. The interpreter rendered the question as "were there occasions when he writes?" Mr. Kamiyama responded in the present tense, "There aren't," but the grand jury interpreter made the answer past tense, "No, no, he didn't do it," in conformity with the question.

44. Count 10 (Exhibit B, page 11): The interpreter's question asks specifically whether Mr. Kamiyama first prepared the checks and the Rev. Moon then signed them, although this sequencing is not in the original question. It is also not clear from this who prepared the checks and who asked Rev. Moon for a signature. It could be Mr. Kamiyama, or it could have been someone else.

45. Count 10 (Exhibit B, page 12): The translated questions did not make clear who might have written the checks or what might have been written. Moreover, Mr. Kamiyama evidently did not understand what he was being asked, and he requested a repetition. Thus, the answer is a response to a second level of

interpretation--the interpreter's explanation of his own translation of the question.

46. Count 10 (Exhibit B, page 13): Mistranslations occurred in the rendition by the interpreter of Mr. Kamiyama's answer. For example, the interpreter embellished Mr. Kamiyama's answer with the phrases "in the book, in the check." Such additions by the interpreter are obviously inappropriate.

47. Count 10 (Exhibit B, page 14): Here, Mr. Flumenbaum sought to confirm the previous series of Mr. Kamiyama's answers by asking if Mr. Kamiyama was clearly aware that the context of the question was the Chase Manhattan accouant in Reverend Moon's name. The interpreter attempted instead to confirm the fact that the account was solely in Reverend Moon's name. Mr. Kamiyama evidently did not understand the question properly; his response stated why Rev. Moon's name alone was used. The interpreter, moreover, inserted a question of his own, "Nothing to do with [his] wife?"

48. Count 11 (Exhibit B, page 16): Mr. Kamiyama's response states watashi ga ikanai, which means "I don't go." (4) says, "I didn't do it myself," using the past form. This is different from saying "I don't go" somewhere.

49. Count 11 (Exhibit B, page 17): (2) asks for the source of the money while (1) asks where Mr. Kamiyama got it. (3) states "family fund(s)" and this is rendered in (4) as "from family fund". The implication in (4) is that Mr. Kamiyama received the money, while the actual response does not say Mr. Kamiyama ever physically received the money.

Moreover, Mr. Kamiyama's use of the Japanese properly rendered as "family fund(s)" makes possible several different interpretations. First, the phrase can be taken either as a proper or a common noun. If it is taken as a common noun, it can mean any one of a number of funds. If it is a proper noun, it refers to a particular fund. Sscond, the word can be taken both as singular and plural. Thus Mr. Kamiyama's reference is non-specific.

50. Count 11 (Exhibit B, page 19):

> "Well, where did you get the $400,000--how did you get the $400,000 that you deposited in Rev. Moon's account?"

The interpreter's response (4) states "Over the years our brethren from Japan who came to USA, they contribute and it was accumulated." In the Japanese version, there is nothing whatsoever that indicates that the brethren from Japan contributed anything. The first sentence says nihon no kyoodai ga desu ne, nihon no menbaa ga desu ne, Amerika ni sootoo kimashita ("Well, ah, many Japanese brothers and sisters, Japanese members, came to America, pretty many in number."). The next sentence is, in fact, ungrammatical; more than likely a word was simply left out. The first half of the sentence says sono hitotachi ga kita okane o zutto atsumete, "Those people continuously collected the money which came." It obviously does not make sense as it is, but that is what Mr. Kamiyama said. The second half of that sentence, sore ga kooza ni hairimashita, means "that went into the account." So the translation (4) is incorrect in a number of ways. First, Mr. Kamiyama does talk about many brethren coming from Japan to America. Mr. Kamiyama then says that certain money was gathered or collected, but he does not say that there is any connection between these people from Japan and the money. The interpreter's translation of Mr. Kamiyama's answer calls attention to the vagueness of the response since there is more ambiguity and vagueness in Japanese for assigning agency than there is in English.

51. Count 11 (Exhibit B, page 22): The question (1), "so why didn't you put this money in a bank account?", is mistranslated by the interpreter to say "Why did you put this money into the bank account, this family fund?" (2). The answer, (4), actually could respond to either the negative or the affirmative question. Mr. Kamiyama says "I (or someone) put in a

portion. The church kept a portion." (3). The expression aru bubun, refers to a certain portion. All that Mr. Kamiyama has said is that there were two portions, and he does not specify the size of either portion. Thus, the translation (4), which states that "the balance was kept," is not at all correct. The two portions could be 10% each or 20% each. There is no reason that the two portions mentioned in Mr. Kamiyama's actual response must add to 100%. (Kenkyusha's New Japanese-English Dictionary).

52. Count 11 (Exhibit B, page 24-25): The response says, in effect, that "the reason someone put the money from overseas into the account is that someone put the money into the account." This is transformed in (4) to say "We put it into Rev. Moon's name." ~~This~~ gives the appearance of answering (1), although the actual response does not. A number of other issues cause confusion: (3) says only that it was "money which came from overseas," a neutral statement. (4) says "as the money came from overseas," implying some relevance to this fact that Mr. Kamiyama probably did not intend. (4) states that the money is to be used to take care of the brethren whereas (3) says that a portion was kept for an emergency, perhaps not related to the brethren. The actual response states that Mr. Kamiyama had someone keep the money (kiipu-sasemashita), and this is not reflected in (4).

53. Count 12 (Exhibit B, page 26): No comments.

54. Count 12 (Exhibit B, page 28):

> "Did you tell Rev. Moon that you were buying additional stock in Tong Il at the time?"

This is somewhat ambiguous, even in English, in that the expression "at that time" can refer to the time Mr. Kamiyama told the Rev. Moon something or the time that Mr. Kamiyama bought additional stock. The Japanese expression sono koro, which occurs in the translated question, has that same ambiguity and so it is not absolutely clear whether the time in question refers to when Mr. Kamiyama told the Rev. Moon something or when he bought additional stock. The response, then, hanashimasen, (3), is mistranscribed. It should be hanashite imasen, "I didn't tell him." But it is not clear which of those two things he did not tell. (1) also asks if Mr. Kamiyama told Rev. Moon he was buying stock, the implication being that he did. The translated question asks if Mr. Kamiyama told Rev. Moon he had intentions of wanting to buy stock. One can have no intentions of wanting to buy stock, and then at a later point buy some anyway. Mr. Kamiyama may thus be responding to the matter of intention rather than deed. Moreover, the interpreter's question does not even make it clear who had the intention to buy the stock. Thus Mr. Kamiyama may be responding to an entirely different question.

55. Count 12 (Exhibit B, page 29): When the interpreter's addition "dare" is stricken from Mr. Kamiyama's answer, the answer becomes "I do not consult with him about that kind of thing." The answer was therefore not a response to the question asked by Mr. Flumenbaum, but merely the assertion that, at present, Mr. Kamiyama is not in the habit of talking with Reverend Moon about such matters as reasons for buying stock.

Moreover, whereas Mr. Flumenbaum's question was quite clear, "Did you discuss with him the reason why you were buying stock," the interpreter's question was substantially different: "Did (someone) ever talk with Reverend Moon about something like the reason for buying stock in Tong Il?"

56. Page 30: Although Mr. Flumenbaum clearly asked about Tong Il stock, the interpreter simply mentioned "shares." It was therefore not clear which stock was being asked about--a possibility strengthened by the lack of any indication of specific time in the question.

Moreover, the interpreter's question does not specifically refer to Rev. Moon. As well, the interpreter states "talking with" while the prosecutor states "ask."

57. Page 31: The actual response uses the word sore ("that"). Sore may refer to one of two parts of the interpreter's question, either the fact that Mr. Kamiyama didn't even think

about having such a conversation with anyone or the fact that Mr. Kamiyama did not think of owning more shares than Rev. Moon. For this reason, (4) is not a response to (1).

58. Count 13 (Exhibit B, pages 32, 33): The two statements of relevance in this count are the translations of Mr. Flumenbaum's questions (1), page 32, and (1), page 33, by the grand jury interpreter. Both of these are badly translated, and it is doubtful that Mr. Kamiyama's responses are in fact direct responses to those original questions. The translation of (1), page 32, is particularly troublesome. It must have been a highly opaque and confusing question for Mr. Kamiyama.

59. Translation of (1) (page 32):

> Uh, to Mike Warder, ah, that SOMEONE received $5,000 from relatives or such; and with that money, ah, someone decided to buy the stock; and if a government inquiry or something came in have (you) ever told him such a thing as to make a statement?

I have used upper case to indicate those entities who are unspecified and indeterminate. It is particularly unclear who received the money. If that is how Mr. Kamiyama interpreted the translator's question, then his response negates the fact that he told Mike Warder to tell investigators that Mr. Kamiyama received $5,000 for the purchase of stock. The expression kau koto ni natta does not specify who bought the stock, nor does it specify who decided. Mr. Kamiyama's negative response could therefore be responding to any of a large number of possible interpretations of the translator's question. (See Hinds, Ellipsis in Japanese.)

Specifically, the Japanese question addressed to Mr. Kamiyama through the interpreter:

1) Does not say that it is Michael Warder who got $5,000;

2) Does not say that it is the government investigators whom Michael was supposed to tell that he had got the money from his relatives or friends;

3) Does not say that the stock was the stock of Tong Il;

4) Does not say from whom the $5,000 was received;

5) Does not say who decided to buy stock;

6) Does not say who bought stock;

7) Does not say to whom the statement would be made.

60. This question (1), page 33, crucially asks, "Did you ever tell Mike Warder to give a false explanation as to HOW he paid for his stock in Tong Il?" The translated question is most properly re-translated as: "Uh, concerning the circumstances [or process or details] with which Mike Warder bought the stock of Tong Il, as for that, ha-- . . . (you) ever told Warder to make a false statement?"

61. Note that the implication of how Warder bought the stock, that is, where the money came from, is not necessarily in the court interpreter's translation (2).

62. To both of these questions, Mr. Kamiyama uses the expression "Watakushi (or watasi) wa arimasen." The word "watakushi" is the first person pronoun "I." As I have noted in reference to Hinds, "Japanese Conversation," (and see Susumu Kuno, The Structure of the Japanese Language, (Cambridge Mass.): MIT Press, 1973), in case a topic is continued, the topic is not specifically mentioned. This use of the expression "watakushi wa" may be an indication that Mr. Kamiyama is contrasting "I" with some unspecified person. That is, it is conceivable, given the structural properties of Japanese noted in the works cited in this paragraph that Mr. Kamiyama is stating "I didn't say such a thing, but perhaps someone else did."

63. Count 1 (Exhibit B, page 34): In statement (1) of the official transcript the prosecutor asked, "Tell the grand jury why you bought 1,000 shares of Tong Il in January, 1974." After some difficulty in determining that this question was asking why did he do it, in (2) the court appointed translator asked why did you purchase it? The response to that in (5) said specifically that the stock was purchased for future development of the Unification Industry. Mr. Kamiyama actually said "Toitsu Sangyo" and this was transcribed as "Toitsu Kaigyo." Toitsu Sangyo means Unification

Industry. The interpreter's translation in (6) stated "there was a dire need for the Unification Church to grow." Thus, the translator said the Unification Church whereas Mr. Kamiyama said the Unification Industry. Mr. Flumenbaum by follow-up question tried to clarify (1) and asked, "Did he say Unification Church or Tong Il?" In (3) the grand jury interpreter says, "Well, you said for the expansion of the Church . . . ?" Mr. Kamiyama in page 42, item (6), said that it is for the expansion of Tong Il Enterprises. There is thus some confusion as to whether Mr. Kamiyama was actually talking about the expansion of the Unification Church or Tong Il Enterprises.

Mr. Kamiyama's answer did not state that the sole reason was for expansion. It simply indicated that the expansion of the enterprise was a reason. Although the prosecutor could have pressed the question to extract a definite answer, he did not do so.

64. Count 1 (Exhibit B, page 35): Mr. Flumenbaum's question (1), "As you sit here today do you recall any other reason other than investment in Tong Il?" was changed in the translation to a negative question omoidasemasen ka? ("Can't you recall . . .?"). As in the prior question, the use of a negative implied strongly that there were other reasons. Mr. Kamiyama was being pressured into responding that there were other reasons because of what the translator had said, not because of what Mr. Flumenbaum had said. Mr. Kamiyama's response said simply "I invested for development."

In addition, while the question sought a "yes" or "no" answer. Mr. Kamiyama did not give one. He never explicitly addressed whether or not there were other reasons. Moreover, at no point in his testimony did Mr. Kamiyama say that this was the sole reason for his investment. Thus, his answer was unresponsive.

Finally, Mr. Mochizuki asked for "some other, more reasons," but this is a very ambiguous rendition. So too was the insertion of the meaningless but possibly misleading, "And, now here, you are in the court." A definite answer can hardly be expected from such a formulation. Indeed it can reasonably be said that the question compounded the existing confusion.

65. Count 1 (Exhibit B, page 36): The question (1), "Were you having any immigration problems at the time?" is mistranslated in (2) to ask, "Did you have any problems with the immigration office?" Quite clearly there is a distinction between immigration problems and problems with the immigration office. Mr. Kamiyama attempts to ask for a clarification, and the court-appointed translator puts in much more information than Mr. Plumenbaum had asked. The interpreter creates examples, changing the question from "Were you having any immigration problems at this time?" to something like "Problems with entering the country or visa problems?" Mr. Kamiyama's response to this is "I didn't have any problems." He may be answering the question "I didn't have any trouble entering the country." It is not clear whether his response "I didn't have any problems" is responding to "problems with the immigration office" or "problems with entering the country."

66. Count 1 (Exhibit B, page 37): The question from Mr. Plumenbaum, "Did you purchase the shares in Tong Il in order to enable you to stay in the U.S. for a longer period of time?", is once again translated by the court interpreter as a negative question, "Didn't you do that as a means to legalize your stay in this country?" Mr. Kamiyama asks at that point if he can have a word with his lawyer.

67. Count 1 (Exhibit B, page 38): Question (1), "Did you make your investment in Tong Il in part for the purpose of staying in this country for a longer period of time?", is translated fairly well. Mr. Kamiyama's response to that is once again mistranslated in (6) because the court interpreter put in the word "purely" and this is not in Mr. Kamiyama's response. Mr. Kamiyama

simply says in (4) "It was for the development of Tong Il Enterprises that I invested."

68. Count 1 (Exhibit B, page 39): The question, "And your visa or immigration matters did not enter into that at all, is that correct?", is essentially translated in (2). Mr. Kamiyama's response is once again mistranslated in (6) to say "I took that step purely for the expansion of Tong Il Enterprises." This is incorrect because, once again, Mr. Kamiyama says simply "I invested for the purpose of development Tong Il Enterprises." He does not say that this is the sole reason.

69. The materials covered in this section of count 1 then demonstrate a high degree of vagueness, ambiguity, and imprecision on the part of the court-appointed translator. I find it very difficult to conclude that Mr. Kamiyama could have been responding to the intent of Mr. Flumenbaum's questions or that Mr. Kamiyama's responses were correctly relayed to Mr. Flumenbaum.

70. There are a number of other areas in which there are severe difficulties with the interpretation. This is demonstrated in many situations in which the interpreter shifts honorific level or leaves expressions vaguely defined. Much of what the interpreter did could be appropriate for a normal conversation or interaction, but when it is important to determine who did what to whom, this type of interpretation is totally unsatisfactory. The interpreter appears to be a native speaker of Japanese. I would think that he is someone born in Japan who has come to the United States at an early age. He has some difficulty expressing himself in English. This is not related to fluency, but rather to means of expression. Some of his expressions are simply incorrect in English, and I believe they do, in fact, cause some difficulty in interpretation.

71. To summarize, again and again it is apparent that the court interpreter's translations are ambiguous, misleading, and incorrect in a number of profound ways. The translator neither

rendered Mr. Plumenbaum's questions correctly or unambiguously to Mr. Kamiyama, and he frequently distorted Mr. Kamiyama's responses to Mr. Plumenbaum. This analysis has centered on those question-answer sequences upon which Mr. Kamiyama was found guilty of perjury, but it is apparent that the imprecision and ambiguity was pervasive.

Oath.

72. The First Day (July 9, 1981, Session 1): A voice spoke the oath in English as follows:

> "Do you solemnly swear that the testimony you are about to give this Grand Jury in the matter now pending before it, shall be the truth, the whole truth, and nothing but the truth, so help you God?"

This was translated into Japanese with the following meaning:

> [Mr. Mochizuki] (the interpreter): As for this case, uh, as for here, as for the truth, all, uh, we (I) think we (I) would like to have you kindly convey only the truth."

73. There are fundamental defects in the oath here due to the mistranslation of the interpreter. The interpreter did not succeed in administering the oath for two reasons. First, he did not ask a question but stated a vague feeling. Second, he did not translate the essential aspects of the oath, i.e., swearing and solemnity.

74. A brief linguistic analysis of the normal oath and the interpreter's version demonstrates quite effectively how different they are. By examining the main verb, the most important elements in each sentence, and seeing what noun phrase and sentential adjuncts accompany the verb, the following useful comparison can be made.

Original	Translation
I. Main verb: SWEAR	I. Main verb: THINK
subject: you	subject: (I/we)
object: embedded clause A	object: embedded clause A
A. Clause A verb: shall be	A. Clause A verb: like to have
subject: (K's) testimony	subject: (I/we)
predicate nominal: truth	object: embedded clause 1
	1. clause 1 verb: convey
	subject: you (Kamiyama)
	object: truth

75. The differences are substantial. First, the English version is a question and requires an answer. The Japanese version indicates a feeling and therefore does not require an answer. Second, the major verb in the English version is "swear." This is consonant with the requirement of an oath or affirmation. The subject of this main clause is "Mr. Kamiyama." This is important because it makes Mr. Kamiyama's actions gramatically prominent, and thus "impresses on his conscience the necessity to tell the truth."

76. In the Japanese version, the main verb is "think" (omoimasu). The verb in the next embedded clause is a desire ("like to have") (itadakitai). It is not until the lowest, or least important clause that the verb to which "you" is attached, "convey" (tsutaete), is used. Not only is this verb buried in an unimportant part of the sentence, it does not project the solemnity and seriousness of the verb "swear."

77. Although the interpreter should have used Japanese word for "swear," chikaimasu, the interpreter did not use it. Thus, the interpreter's version did not fulfill one of the most basic requirements of the oath.

78. The major point of similarity is that both versions contain the word "truth." The original places this word and its modifications in a prominent position as the predicate nominal in an equational clause. The word is buried in the Japanese version, being in the least important clause as the direct object of the verb "convey."

79. Thus it is apparent that the rendition of the oath into Japanese is a failure in that it does not solicit agreement, it does not convey the same information as the original, and it does not convey the solemnity required. Moreover, in attempting to administer the oath, the interpreter spoke disfluent, halting, awkward Japanese.

In addition, the language used in the translation is much too polite for the occasion and makes it sound as if the court is asking for a favor of a superior, rather than demanding obedience to the law. The interchange cannot reasonably be understood as eliciting any sort of agreement or promise from Mr. Kamiyama.

Finally, Mr. Kamiyama's answer does not fulfill his side of the oath, even assuming that the first portion of the oath met minimum requirements. Mr. Kamiyama's response, "Hai" ("yes"), must be seen in the context of a statement rather than a question. The expression hai in Japanese is ambiguous. One meaning is, "Yes I agree/understand." Another meaning is simply "I have heard you."

80. (July 9, 1981, Sessions 2 and 3)

At the beginning of Session 2, the following was said in English:

> . . .[u]nder oath.
> The witness is still under oath.

In English, the Japanese Mr. Kamiyama heard was:

> The oath from before, even now un, it's in
> effect, so . . . the oath from before.

Mr. Kamiyama replied, hai, which means either "yes" or "I heard you." No full oath was given at this session.

81. Similarly, at Session 3, the following occurred:

What was said in English:

> And Mr. Kamiyama, you're still under oath.

What Mr. Kamiyama heard:

> Uh, the oath from before, OK? it's still in
> effect, so . . .

What the court heard:

> (Nothing translated.)

What Mr. Kamiyama said:

> hai.
>
> (a) Yes, [or]
> (b) I heard you.

And later in the same session:

What was said in English:

> Would you remind the witness he's under oath?
> Still under oath, sir.

What Mr. Kamiyama heard:

> Uh, the oath from before is still in effect.

What the court heard:

> Yes.

What Mr. Kamiyama said:

> iesu.
>
> yes.

No full oath was given at this session.

82. The Second Day (July 16, 1981, Session 1): A voice spoke the oath in English as follows:

> "You do solemnly swear that the testimony you are about to give to this Grand Jury in the matter now pending before it shall be the truth, the whole truth, and nothing but the truth, so help you God?"

The interpreter rendered this in Japanese that translates as follows:

> "At this time before the Grand Jury, OK? We'd like to have you give a statement as a reference and as for this, uh, everything we'd like to have you convey only the truth."

This effort was a somewhat more elaborate administration of the oath, but here, too, serious problems of mistranslation existed. First, the oath was rendered not as a question, but as a statement. Second, elements of the oath, such as "swear" and "solemnly" were not conveyed at all.

Moreover, according to the tape recording, Mr. Kamiyama actually gave no verbal response to the interpreter's rendition of the request to tell the truth. Nevertheless, the interpreter unilaterally said "Yes".

83. (July 16, 1981, Session 2)

The following was said in English:

> Would you remind the witness that he is still under oath? Would the witness and the interpreter please remember you're both under oath, as of this moment.

Mr. Kamiyama heard the Japanese equivalent of:

> For both the interpreter and the witness, the previous oath is still in effect so . . .

Mr. Kamiyama said:

> Hai, wakarimashita.
>
> (a) Yes, I understand [,or]
> (b) I heard you.

No full oath was given at this session.

84. The Third Day (July 21, 1981, Session 1): Any record of the administration of an oath is missing from the tape, although the transcript reports that Mr. Kamiyama was duly sworn.

85. (July 21, 1981, Session 2)

The following was said in English:

> Would you please remind the witness he's still under oath?
>
> Under oath.

Mr. Kamiyama heard words meaning:

> Uh, the oath is still in effect, so . . .

Mr. Kamiyama said:

> iesu.
>
> yes.

No full oath was given at this session.

86. July 21, 1981, Session 3)

The following was said in English.

> Do you solemnly swear that the testimony you are about to give to this Grand Jury in the matter now pending before it shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Kamiyama heard the Japanese equivalent of:

> Right now, the testimony that we would like to have you give at the grand jury, we would like to have you speak all and only the truth.

Mr. Kamiyama said:

> hai, wakarimashita.
>
> (a) Yes, I understand. [or]
> (b) Yes, I heard you.

The interpreter rendered this as, "Yes."

Here again, the interpreter's version of the oath was in the form of a declarataive statement, and no word for "swear" was used. Also as in the first oath administration, Mr. Kamiyama's response was ambiguous.

Perjury Warnings

87. The First Day (July 9, 1981, session 1): The following interchange occurred (the words spoken by the prosecuting attorney, Martin Flumenbaum, are followed by accurate translations of the words of the interpreter, Mr. Mochizuki, and of the witness, Mr. Kamiyama):

> Q. [Mr. Flumenbaum]: Finally, Mr. Kamiyama, if you should give a false answer or fail to testify completely and truthfully in response to question that I ask you, you could be charged with a separate criminal, uh, violation for perjury or for obstruction of justice. Do you understand that?
>
> [Mr. Mochizuki]" And, and, uh, with today's questions and answers, uh, if there are any false answers or to neglect to testify, separately, see there is a possibility that you will be criticized according to criminal law.
>
> A. [Mr. Kamiyama]: That means not the tax laws, but . . . .
>
> [Mr. Mochizuki]: Does that mean that on top of or apart from the tax laws?
>
> Q. [Mr. Flumenbaum]: That's correct, if you should testify falsely.
>
> [Mr. Mochizuki]: Uh . . . testimony . . . testimony . . . ee . . . if you bend your testimony or things like that.
>
> A. [Mr. Kamiyama]: That means (that I shall be) charged with perjury?
>
> [Mr. Mochizuki]: Does that mean, once again, that I shall be charged for . . . . I am trying to find the word. [Mr. Flumenbaum whispered: "perjury"] Fraudulent answers or fraudulent, well, negligence of testimony or . . . .
>
> Q. [Mr. Flumenbaum]: If you should knowingly and willfully give false answer to this Grand Jury that is a separate crime. Do you understand that?
>
> [Mr. Mochizuki]: Uh, . . . knowingly, you know . . . ee . . . the meaning is that the act of making false statements, or . . . aaa . . . twisting your testimony, can become comparable to committing a crime. Is that clear to you?
>
> A. [Mr. Kamiyama]: Yes, I understand.
>
> [Mr. Mochizuki]: Yes. I understand.

88. It is far from clear from this exchange that Mr. Kamiyama was given a sufficiently clear explanation to permit him to understand the gravity of the situation or that he understood he could be charged with perjury if he gave false testimony.

89. In the first statement concerning perjury, the prosecutor stated, "Finally, Mr. Kamiyama, if you should give a false answer or fail to testify completely and truthfully in response to a question that I ask you, you could be charged with a separate criminal violation for perjury or for obstruction of justice. Do you understand that?" Of note are four points.

90. First, the prosecutor clearly stated that giving a false answer could result in a separate charge of perjury or obstruction of justice. However, in the interpreter's rendition, there is no mention of the word for perjury. A competent translator familiar with the Japanese judicial system would have easily supplied the word gishoozai, which means "perjury."

91. Second, in stating what could happen if Mr. Kamiyama provided false answers (kyogi no kotae) or neglected to testify (shoogen o okotaru), the interpreter said only that Mr. Kamiyama could be "criticized" (hinan sareru). The Japanese expression did not convey the gravity that the English expression "charged with perjury" does. Mr. Kamiyama apparently did not understand this completely since he asked for a clarification (to iu koto wa zeihoo de nakushite?)("That means not the tax laws, but . . .").

92. The prosecutor responded to this by saying, "That's correct, if you should testify falsely." This was a clear and unambiguous response to Mr. Kamiyama's question. The prosecutor apparently felt that he clarified any confusion that Mr. Kamiyama may have had. However when this was conveyed to Mr. Kamiyama by the interpreter, there was no word which answered Mr. Kamiyama's question; there was nothing equivalent to "that's correct."

93. Third, the interpreter further confused the issue by using the expression shoogen o magetari ("bend your testimony or things like that"). This statement had the effect of minimizing

the seriousness of not stating the truth both by using a colloquial expression and by using the representative form of the verb, the meaning of which is conveyed by "and things like that."

94. Fourth, Mr. Kamiyama then apparently sought to clarify the situation. He asked, to iu koto wa gishoozai ni towareru to iu koto desu ka? ("that means that I shall be charged with perjury?"). Thus it was Mr. Kamiyama, not the interpreter, who first stated the proper word for perjury.

95. Mr. Kamiyama's question required a yes or no answer. In putting Mr. Kamiyama's question into English, the interpreter apparently was unable to think of the English word "perjury," even though, according to the tape, Mr. Flumenbaum whispered the word "perjury." Instead, the interpreter used circumlocution. "Does that mean, once again, that I shall be charged for . . . . I am trying to find the word. [Mr. Flumenbaum whispered: "perjury."] Fraudulent answers or fraudulent well, negligence of testimony or . . . ."

96. The prosecutor could not have known that Mr. Kamiyama had asked a yes or no question. Yet the lack of a straightforward yes or no answer resulted in an ambiguity about what he might be charged with, particularly in view of the earlier admonition that he would be "criticized" (hinan sareru) if he "bent the truth."

97. An analogy is in order to make this point clearer. Assume a man has made his girlfriend pregnant. He asks the girl's father, "Do I have to marry her?" An unambiguous response would be, "Yes." If, however, the father responds, "Well, you have to support her and give child support, and things like that," the logical conclusion is that the answer means "No, you don't have to marry her, but you have to recognize other responsibilities."

98. When Mr. Kamiyama asks, in essence, "Will I be charged with perjury," an unambiguous response is "Yes." The lack of a "yes" answer leads to the logical conclusion that Mr. Kamiyama would not be charged with perjury, although he may be held responsible for something else. That this something else is of

lesser consequence is the natural conclusion because of the interpreter's prior use of the expression hinan sareru ("be criticized").

99. The Second Day (July 16, 1981, session 1): The prosecutor began to explain the perjury warning to Mr. Kamiyama as follows:

> Q. [Mr. Plumenbaum]: I advised you of your rights last week before the Grand Jury and I am not going to repeat them at this time except to advise you that if you answer any questions that I put to you falsely, you should be aware that that is a separate federal crime. It has nothing whatsoever to do with . . . . and you can be prosecuted separately for that crime. You understand that?
>
> [Mr. Mochizuki]: Since I explained your personal rights the time before, I won't repeat them, but in your statement if there is a false answer or statement, even though it's outside this cases, there is a situation where this will become an adverse charge against you, so in any case, please pay careful attention.
>
> A. [Mr. Kamiyama]: (inaudible)
>
> [Mr. Mochizuki]: Yes, it's clear.

100. Mr. Kamiyama was not given an explanation sufficiently clear reasonably to permit him to understand the gravity of the situtation or that he could be charged with perjury. Mr. Plumenbaum stated, "[I will] advise you that if you answer any question that I put to you falsely, you should be aware that that is a separate federal crime. It has nothing to do with . . . and you can be prosecuted separated for that crime. You understand that?"

101. There are two aspects of Mr. Plumenbaum's explanation that are of special importance because they were not conveyed to Mr. Kamiyama. First, Mr. Plumenbaum stated, "false testimony constitutes a separate federal crime." This was translated as "false answer or statement, even though it's outside this case, there is a situation where this will become an adverse charge against you." The translation is virtually impenetrable. But beyond that, there was no reference to the fact that false

testimony is a separate federal crime. Again, Mr. Kamiyama had been informed the week before that he might be criticized for false testimony. It is entirely possible that Mr. Kamiyama continued to adhere to the belief that false testimony was something he was responsible for, but that false testimony did not constitute a separate criminal offense.

102. Second, Mr. Kamiyama evidently was not given an opportunity to ask a question about this to attempt to clarify any potential confusion. Mr. Plumenbaum probably thought he had given Mr. Kamiyama the opportunity to ask questions since he asked, "You understand that?" Since the interpreter's response was "Yes, it's clear," it appears that Mr. Kamiyama understood. However the interpreter mistranslated the question as "Please pay careful attention," a polite command that did not give Mr. Kamiyama the opportunity to ask for a clarification.

103. The Third Day (July 21, 1981, Session 1): The prosecutor began to explain the perjury warning to Mr. Kamiyama as follows:

> Q. [Mr. Plumenbaum]: And let me again repeat to you what I mentioned to you at both prior sessions, that if you should give any false answer to any questions that are put to you, that's a separate federal crime, and you can be prosecuted for that.
>
> [Mr. Mochizuki]: Ah, I explain, I (kindly) explained this twice before, but, uh, if you give a false statement, that will become, a, uh, again completely, a new charge.
>
> A. [No response.]

At this session, the same problem occured. Mr. Plumenbaum's statement was clear. However, in the interpreter's version there was no mention of either a federal crime or a prosecution. Thus, in view of the reference to previous warnings, there is the distinct possibility that Mr. Kamiyama was still associating "false statement" with being criticized. This did not convey the serious consequences of being prosecuted for a federal crime.

Fifth amendment warnings.

104. The First Day (July 9, 1981, A.M. Session 1): The following exchanges occurred (translations as above):

> [Mr. Flumenbaum]: "You are entitled to certain rights, and let me explain to you what those rights are. First, you may refuse to answer any question if a truthful answer to that question would tend to incriminate you, personally, in any way, shape or form. Do you understand that?"
>
> [Mr. Mochizuki]:" . . . there are several rights granted to you. I will have the pleasure of explaining these to you. First, you are able to refuse answers to questions which may cause you to fall into crime. Do we have your kind understanding?"
>
> [Mr. Kamiyama]: Hai
>
> (a) Yes [or]
> (b) I heard.
>
> [Mr. Flumenbaum]: "Second, anything you do say here could be used against you, not only by this Grand Jury but in a court of law. Do you understand that?
>
> [Mr. Mochizuki]: Also, as for what you kindly state here today, uh, there is a possibility that (it) may become (something) to your disadvantage. As for that, can (I) have your kind understanding?
>
> [To Mr. Flumenbaum]: He wants a repetition.
>
> [Mr. Flumenbaum]: You should be aware that anything you do say in front of this Grand Jury can be used against you, not only by this Grand Jury, but in any court proceeding. Do you understand that?
>
> [Mr. Mochizuki]: Today, what you kindly state, uh, at this Grand Jury, uh, to your disadvantage, may be used, and also, uh, legal . . . uh, in the future steps from now on, (something) which continues, un, among them also, uh, a possibility exists that it may be used to your disadvantage. Is that clear? Do you understand?
>
> [Mr. Kamiyama]: Hai.
>
> (a) Yes [or]
> (b) I heard.
>
> [Mr. Flumenbaum]: "Finally, Mr. Kamiyama, if you should give a false answer or fail to testify completely and truthfully in response to questions that I ask you, you could be charged with a separate criminal . . uh . . violation for perjury or for obstruction of justice. Do you understand?"
>
> [Mr. Mochizuki]: And, and, uh, with today's questions and answers, . . . uh, if there are any false answers or neglect to testify, separately, there is a possibility that you will be criticized according to criminal law.

From the outset it appears that Mr. Kamiyama did not understand the warning. He at first asked for a repetition. However, the interpreter's attempted clarification failed, for example, to state that what Mr. Kamiyama was to say could be used against him in any "court proceedings". Moreover, in the final passages, the interpreter implied that refusing testimony itself is prohibited, effectively negating the statement of rights explained earlier.

105. The Second Day (July 16, 1981, A.M. Session 1): At the beginning of the first session on the 16th of July, the prosecutor gave perjury warnings to Mr. Kamiyama, but sought not to repeat the statement of fifth amendment rights because, he said, "I advised you of your rights last week." When Mr. Kamiyama brought up the issue, however, the prosecutor stated the following:

> "At any time, Mr. Kamiyama, that I ask you a question and you want to invoke your Fifth Amendment privileges, please feel free to do so."

The interpreter rendered this as follows:

> "And, uh, whenever I ask you a question, well, according to the revised item of the fifth article, you are protected, so, as for using that that is your right."

106. Even assuming a correct translation, it is by no means clear that Mr. Kamiyama, as a Japanese citizen, would have known what the fifth amendment privilege is. Just as the average American may understand what the fifth amendment protects, the average Japanese knows what Mokuhiken (right to remain silent) means. This Japanese expression was never used by the interpreter, nor did the interpreter here otherwise explain the concept.

107. The translation was, however, not correct. Instead of "fifth amendment" the interpreter referred to the "revised item of the fifth article." The term "fifth amendment" is an example of a frozen expression with an institutional meaning separate from the meanings of the individual words considered by themselves. The interpreter's version cannot reasonably be viewed as its equivalent.

108. The Third Day (July 21, 1981, Session 4): There was no explanation of fifth amendment rights at the first session on July 21. It was not until the afternoon that the concept of fifth amendment rights was mentioned by the prosecutor. During the questioning, the prosecutor said the following:

> "I am asking you questions, Mr. Kamiyama. If you want to refuse to answer them, you can refuse to answer the questions, but you have to answer whatever questions I ask you. If you want to refuse to answer them and exercise your fifth amendment rights, you can."

The interpreter translated this in the following fashion:

> "Now, I am directing my questions to you, but, if you will insist on refusing . . . according to . . . uh . . the fifth article, you know, amended . . . well . . . something like an amended law, is it? . . . according to that, you have the right to refuse. However, uh, we think we'd like you to answer the questions we have asked you as much as possible."

110. Here again the interpreter inaccurately rendered "fifth amendment." Moreover, the interpreter failed to preserve the tone of the prosecutor's statement. While the prosecutor finished with an acknowledgment of a privilege not to answer, the translation ended by saying "we'd like you to answer."

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 18, 1984.

/s/ John Hinds

Exhibit A-1

John Hinds
645 Easterly Parkway
State College, PA 16801
814-238-7693

Director, Center for ESL
Associate Professor
Department of Speech Communication
The Pennsylvania State University
University Park, PA 16802
814-865-7365

Vita

Education

B. A.	Trenton State College, Trenton, NJ Major: English Degree awarded: 1965
M. A.	Western Illinois University, Macomb, IL Major: English/linguistics Degree awarded: 1968
Ph. D.	State University of New York, Buffalo, NY Major: Linguistics Degree awarded: 1973
Summer:	Yousei University, Seoul, KOREA (1973) Seoul National University, Seoul, KOREA (1976)

Major positions held

1965-67	Linden High School, Linden, NJ--Teacher of English
1969-70	State University of New York at Buffalo, Buffalo, NY--Graduate Assistant, Department of Linguistics
1971-72	State University College at Brockport, Brockport, NY--Instructor in linguistics, Department of English
1972-75	University of the Sacred Heart, Hiroo, Shibuya, Tokyo, JAPAN--Director of Freshman English and Assistant Professor of English
1975-79	University of Hawaii, Honolulu, HI--Assistant Professor of Japanese, Department of East Asian Languages; Associate Professor (tenure awarded), 1980
1979-81	University of Minnesota, Minneapolis, MN--Visiting Assistant Professor of Japanese, Department of East Asian Languages

Major awards and honors

1970-71	Woodrow Wilson Dissertation Fellowship
1970-71	National Science Foundation Grant for the Improvement of Doctoral Dissertations in the Social Sciences
1976	Fulbright-Hays Award, Council for International Exchange of Scholars, Seoul National University, Seoul, KOREA, summer
1977-78	University of Hawaii Japan Studies Endowment
1981	Travel Grants from Gest Oriental Library and Department of East Asian Studies, Princeton University, Princeton, NJ, April, November

Listed in

Directory of American Scholars, Seventh Edition

Men and Women of Distinction, First Edition

International Who's Who in Education

Major professional activities

1977	Committee member, local planning committee for Symposium on Problems in Japanese Syntax and Semantics, Linguistic Society of America Linguistic Institute, University of Hawaii
1977, 1981	Referee for *Journal of the Association of Teachers of Japanese*
1982	Reader for *JGE: The Journal of General Education*
1980	Reader for University of British Columbia Press
1980	Editorial board of *Papers in Linguistics*
1981	Review editor of *Papers in Linguistics*
1982	Vice-President of Research in Linguistics, Inc.

Lectures and papers delivered

More than 80 lectures and papers presented in five countries. A list is available upon request.

Research interests

Discourse and conversational analysis, sociolinguistics, Japanese linguistics, nonverbal behavior, cognition, contrastive studies, second language acquisition

Courses taught

Japanese language, English language, introduction to language, introduction to linguistics, transformational syntax, semantics, discourse structure, English structure, Japanese structure, field methods, contrastive linguistics, Japanese nonverbal behavior, language and cognition, Japanese conversational analysis, Japanese sociolinguistics, history of English, history of Japanese, theory of second language acquisition, Teaching English as a Second Language, Crosscultural Communication

Publications

1. Books

1976	*Aspects of Japanese Discourse Structure*. Kaitakusha: Tokyo
1978	*Problems in Japanese Syntax and Semantics*. Kaitakusha: Tokyo (EDITOR, with Irwin Howard)
1978	*Anaphora in Discourse*. Linguistic Research, Inc.: Alberta (EDITOR)
1981	*Ellipsis in Japanese*. Linguistic Research, Inc.: Alberta

2. Proceedings

1977	*Proceedings of the Second Annual Meeting of the University of Hawaii-Hawaii Association of Teachers of Japanese*. University of Hawaii: Honolulu (EDITOR)

3. *Dissertation*

1973	Japanese discourse structure: Some discourse constraints on sentence structure, State University of New York at Buffalo, Buffalo, NY (advisor, Paul L. Garvin)

4. *Articles and review articles*

1971	Personal pronouns in Japanese, *Glossa* 5:145-55
1971	Discourse constraints on syntax, in D. Hays and D. Lance (eds), *From Soundstream to Discourse*. The University of Missouri Press: Columbus, 115-24
1972	Evidence for performatives in Japanese, *Journal-Newsletter of the Association of Teachers of Japanese* 7:6-14
1972	The domain of syntax, in L. Heilmann (ed), *Proceedings of the 11th International Congress of Linguists*, Societa editrice il Mulino Bologna: Bologna, 335-42
1973	Theme-rheme in Japanese, *Seishin Studies* 41:1-13
1973	Anaphoric demonstratives in Japanese, *Journal of the Association of Teachers of Japanese* 8:1-14
1973	The underlying representation of conversation, *Bulletin of the Research Institute of Logopedics and Phoniatrics* 7:165-86
1973	Some remarks on *soo su-*, *Papers in Japanese Linguistics* 2:18-30
1973	Missing subjects, *Papers in Japanese Linguistics* 2:147-55
1973	On the status of the VP node in Japanese, *Language Research* (Seoul) 9:44-57
1974	Verbs of judging in Japanese and Korean, *Descriptive and Applied Linguistics* 7:103-20
1974	The Scandinavian influence on the English language, *Seishin Studies* 42:1-11
1974	Optional pronominalization at the discourse level, *Bulletin of the Research Institute of Logopedics and Phoniatrics* 8:145-52
1974	Two points to be raised, *Studies in English Linguistics* 3:312-9
1974	Nonverbal modalities of communication, *Nihongo Kyoiku* 24:37-46
1974	Passives, pronouns, and themes and rhemes, in *Papers to Honor Professor Oh on his 60th Birthday*, Dongguk Review, Numbers 5 & 6:199-225
1974	Recent trends in American discourse analysis, in *Proceedings of Recent Trends in American Linguistics: Language and Linguistics* (Seoul) 2:58-66
1974	Make mine *burakku*: A semantic analysis of loan words in Japanese, *Language Research* (Seoul) 10:92-108
1975	Passives, pronouns, and themes and rhemes, *Glossa* 9:79-106

1975	Review article of *The Structure of the Japanese Language* by Susumu Kuno, *General Linguistics* 14:82-105
1975	Aspects of conversational analysis, *Linguistics* 151:25-40
1975	Third person pronouns in Japanese, in F. Peng (ed), *Language in Japanese Society*, Tokyo University Press: Tokyo, 129-57
1975	Interjective demonstratives in Japanese, *Descriptive and Applied Linguistics* 8:19-42
1975	Korean discourse types, in H.-M. Sohn (ed), *The Korean Language: Its Structure and Social Projection*. The Center for Korean Studies/University of Hawaii: Honolulu, 81-90
1975	A survey of approaches to discourse analysis, *Seishin Studies* 45:1-29
1975	Constraints on deletion and substitution transformations, *Language and Linguistics* (Seoul) 3:133-44
1976	A taxonomy of Japanese discourse types, *Linguistics* 184:45-54
1976	Postposing in Japanese, *Eoneo* (The Journal of the Linguistic Society of Korea) 1:113-25
1976	Conditions on conditionals in Japanese, *Papers in Japanese Linguistics* 4:3-11 (with Wako Tawa Hinds)
1976	Noun phrase deletion in Japanese discourse, *Japanese Linguistics and Language Teaching*, University of Hawaii: Honolulu, 10-8
1977	Towards an analysis of discourse (in Japanese), in K. Nomoto and M. Nobayashi (eds), *Nihongo to Bunka, Shakai 5: Kotoba to Joohoo*. Sanseido: Tokyo, 197-234
1977	Three recent perspectives in sociolinguistics (in Japanese), in K. Nomoto and M. Nobayashi (eds), *Nihongo to Bunka, Shakai 8: Kotoba to Shakai*. Sanseido: Tokyo, 277-96
1977	Conversational structure, in J. Hinds (ed), *Proceedings of the Second Annual Meeting of the University of Hawaii-Hawaii Association of Teachers of Japanese*. University of Hawaii: Honolulu, 52-81
1977	Paragraph structure and pronominalization, *Papers in Linguistics* 10:77-99
1977	Ellipsis in Japanese, *Papers in Japanese Linguistics* 5:63-98
1978	Conversational structure: An investigation based on Japanese interview discourse, in J. Hinds and I. Howard (eds), *Problems in Japanese Syntax and Semantics*. Kaitakusha: Tokyo, 79-121
1978	Textuelle Beschränkungen der Syntax, in W. Dressler (ed), *Textlinguistik*. Wissenschaftliche Buchgesellschaft: Darmstadt, 344-56 (translation of Discourse constraints on syntax, 1972)
1978	Anaphora in Japanese conversation, in J. Hinds (ed), *Anaphora in Discourse*. Linguistic Research, Inc.: Alberta, 136-79

1978	Levels of structure within the paragraph, *Proceedings of the Fourth Annual Meeting of the Berkeley Linguistic Society* 598-609
1978	Towards a theory of ellipsis in Japanese discourse, *University of Hawaii Working Papers in Linguistics* 10:15-72
1979	Organizational patterns in discourse, in T. Givón (ed), *Syntax and Semantics 12: Discourse and Syntax*. Academic Press: NY, 135-57
1979	Where do we go from here? in D. Malsch, J. Hoard, C. Sloat (eds), *Proceedings of the Eighth Annual Meeting of the Western Conference on Linguistics*. Linguistic Research, Inc.: Alberta, 37-47
1979	Ellipsis and prior mention in Japanese conversation, in W. Wölck and P. Garvin (eds), *LACUS V*. Hornbeam Press: Columbia, 318-35
1979	The ellipsis of possessor noun phrases in Japanese conversation, *University of Hawaii Working Papers in Linguistics* 11:23-37
1979	Ellipsis and prior mention in Japanese conversation, *University of Hawaii Working Papers in Linguistics* 11:39-54
1979	Participant identification in Japanese narrative discourse, in G. Bedell, E. Kobayashi, M. Muraki (eds), *Explorations in Linguistics: Papers in Honor of Kazuko Inoue*. Kenkyusha: Tokyo, 201-12 (with Wako Hinds)
1979	A note on time and space, *Papers in Japanese Linguistics* 6:131-43 (with Wako Hinds)
1979	Problem solving as a conversational activity, *Grazer Linguistische Studien* 10:95-104
1980	Japanese conversation, discourse structure, and ellipsis, *Discourse Processes* 3:262-86
1980	The interpretation of ellipsis in Japanese conversation, *Descriptive and Applied Linguistics* 13:19-38
1980	The interpretation of ungrammatical utterances, in F. Coulmas (ed), *A Festschrift for Native Speaker*. Mouton: The Hague, 221-35
1980	Japanese expository prose, *Papers in Linguistics* 13:117-58
1981	Noun phrase ellipsis in written Japanese texts, *Papers in Japanese Linguistics* 7:21-33
1982	Japanese conversational structures, *Lingua* 57:65-70

5. *Brief notes*

1970	Remarks on *The Sound Pattern of English*, Chomsky and Halle, *Preprints from Buffalo*, Volume 1, Number 1
1972	More on Equi-NP deletion, *Papers in Japanese Linguistics* 1:171-3
1973	On 'epenthetic' vowels, *Papers in Linguistics* 6:259-61
1973	Case markers and complementizers: Japanese and Korean, *Working Papers in Language Universals* 13:93-6

1975	Backwards pronominalization across coordinate structures. *Linguistic Inquiry* 6:330-5 (with Nobuo Okada)
1977	Particle deletion in Japanese and Korean. *Linguistic Inquiry* 8:602-4

6. Reviews

Reviews have appeared in *Preprints from Buffalo*, *Gengo Kenkyu*, *Eigogaku*, *General Linguistics*, *Studies in Language*, *The Modern Language Journal*

A list is available upon request.

COUNT 9

	PROSECUTOR'S QUESTION 1.		**INTERPRETER'S ANSWER** 4.
	Did Rev. Moon know he owned stock in Tong Il, that stock was in his name in Tong Il?		I doubt it, because I took it up myself, and did all what I had to do. So, I don't think he knew it.
	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		**MR. KAMIYAMA'S ACTUAL ANSWER** 3.
Correct Translat.	And, at (in) Tong Il, um did [you or he] know that there are stocks in the Reverend's name?	Correct Translat.	I don't think (he) knows (about it). I decided (it), and I did (it).

COMMENTS

A. (1) asks question in terms of who "owned" stock and whose "name" it was in;
(2) doesn't ask who "owned" it but only whose "name" it was in.

B. In Mochizuki's Japanese (2), it is not clear who knows about someone owning stocks.

C. In Mochizuki's Japanese (2), the honorific oraremashita does not differentiate between Rev. Moon's knowing and Mr. Kamiyama's knowing.

PROSECUTOR'S QUESTION 1.	INTERPRETER'S ANSWER 4
Did you tell Reverend Moon that you had issued 50,000 dollars worth of stock in his name?	No, I never mentioned it.

	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
Correct Translat.	And, uh, have you ever talked about there being stocks worth $500--ah, $50,000 in the Reverend's name?	Correct Translat.	No.

COMMENTS

A. Not clear who was involved in conversations.

B. Not clear who issued the stock.

C. Use of verb aru (arimasu) indicates existence of something rather than an action such as issuing.

D. (4) is not a response to (1).

PROSECUTOR'S QUESTION 1.	INTERPRETER'S QUESTION 4.
Never discussed it with him?	No. It was like my simply borrowing his name and I did execute it.

	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
orrect	That, ah, you've never discussed the talk with (someone) at all, right?	Correct Translat.	No, because I borrowed his name, and decided, and did it myself.

COMMENTS

A. Not clear with whom Mr. Kamiyama had the conversation.

B. The word simply is not in Mr. Kamiyama's response.

C. The word like is not in Mr. Kamiyama's response.

E. The word execute is not in Mr. Kamiyama's response. The word execute (means "To carry out what is required by"; "Yarimashita", means simply did (American Heritage Dictionary of the English Language). This implies that Mr. Kamiyama is following someone's orders, and Mr. Kamiyama does not say he is doing this.

F. (4) is not a response to (1).

PROSECUTOR'S QUESTIONS 1.	INTERPRETER'S ANSWER 4.
Did Reverend Moon sign any documents in connection with his ownership of stock in Tong Il?	No, there was no such occasion.

	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
Correct Translat.	And, uh, concerning the ownership of stock certificate(s), the ownership of stock(s), uh, didn't the Reverend have to sign, on document(s), wasn't there that kind of thing?	Correct. Translat.	No.

COMMENTS

A. Mochizuki's Japanese (2) contains an expression which means "had to sign".

B. Mochizuki's Japanese (2) is in negative while (1) is in affirmative (implication on the part of Mochizuki's Japanese (2) that there were such occasions while (1) is neutral).

C. Mochizuki's Japanese (2) does not make it clear that Rev Moon owns the stock; the utterance is vague.

D. The answer in Mr. Kamiyama's Japanese, "arimasen" is merely negating the fact that the Rev. Moon had to sign any documents. It does not say anything whatsoever about whether Rev. Moon did sign documents.

E. (4) is not a response to (1).

PROSECUTOR'S QUESTIONS 1.	INTERPRETER'S ANSWER 4.
And you never talked to him about it.	That is correct, and nothing of the specific day-to-day office work.

	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
orrect ranslat.	And, uh, anyway, as for that matter, you didn't talk to the Reverend?	Correct. Translat.	I didn't talk (about it). I never talked about practical business matters.

COMMENTS

A. (4) contains the word and. This implies that Mr. Kamiyama did not speak about the ownership of stock and as well he did not speak about practical business matters. Mr. Kamiyama actually says that the ownership of stock is one instance of practical business matters.

B. The response in Mr. Kamiyama's Japanese can be assumed to mean that Mr. Kamiyama is talking about not speaking about the Rev. moon's having to sign something.

C. The Japanese expression jitsumuteki na koto is extremely ambiguous in that may mean either everyday business activities or specific day-to-day activities and so either does nor does not encompass Rev. Moon's signing of documents.

D. (4) is ambiguous response to (1).

COUNT 10

	PROSECUTOR'S QUESTIONS 1.		INTERPRETER'S ANSWER 4.
	You carried the checkbook with you from the very beginning of the account?		Yes, I kept it myself, from the beginning.
	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
Correct Translat.	So, at the very beginning, (someone) established the account, and from the beginning, you, as for the checkbook ... car--	Correct. Translat.	That, I managed (it).

COMMENTS

A. Mochizuki's Japanese (2) lacks a main verb, it could have been interpreted by Mr. Kamiyama to mean any number of things--did you order the checks for it (chuumon shimashita ka?) is one such possible reading.

B. In in Mr. Kamiyama's Japanese Mr. Kamiyama does not say yes although this is in (4).

C. In his Japanese answer, Mr. Kamiyama does not say from the beginning although this is in (4)

D. It is not clear how Mr. Kamiyama interpreted this question.

E. The translation (4), "yes, I kept it myself," inserts the word "myself", which is not in Mr. Kamiyama's speech. The insertion of the word "yes" in (4) is insidious because it makes the Q-A pair (1)-(4) seem coherent.

D. (4) is ambiguous response to (1).

PROSECUTOR'S QUESTIONS 1.	INTERPRETER'S ANSWER 4.
Did Reverend Moon carry the checkbook with him?	He doesn't, because I managed it.

	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
orrect ranslat.	Well,as for Rev Moon, the checkbook, [Mr. Kamiyama coughs and says hai ("yes")] does he take this together with him (or you)? (2 is ungrammatical in Japanese.)	Correct. Translat.	Oh, uh, excuse me. Because I ca-- managed it.

COMMENTS

A. Mochizuki's Japanese (2) asks does Rev Moon carry the checkbook rather than did he carry the checkbook.

B. The phrase goissho ni is usually used with animates and not objects; the Japanese translation is therefore awkard.

C. The response, in Mr. Kamiyama's Japanese, means -just as in English, because in charge of something does not necessarily mean that you have the material in your physical possession.

D. (4) is ambiguous response to (1).

PROSECUTOR'S QUESTIONS 1.	INTERPRETER'S ANSWER 4.
Did you sign any of the checks for Reverend Moon's account?	I never signed it myself, although I asked him for signature, and I made a request, but I never signed myself.

	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
Correct Translat.	And, have you ever signed a check from Rev. Moon's account?	Correct. Translat.	I have never signed (one). I have had (someone) sign though.

COMMENTS

A. 1E asks if Mr. K has ever signed any checks for Rev Moon's account; Mochizuki's Japanese (2) asks if Mr. K has ever signed any checks. The relationship between the checks being spoken of and Rev. Moon's account is not clear from Japanese construction.

B. (4) says Mr. K asked for a signature, in Japanese Mr. K says he received a signature from someone, not necessarily Rev. Moon.

C. (4) says Mr. K asked Rev Moon for a signature, in Japanese Mr. K does not say he received Rev Moon's signature.

D. (4) is ambiguous response to (1).

PROSECUTOR'S QUESTIONS 1.	INTERPRETER'S ANSWER 4.
Reverend Moon signed all the checks?	That's correct.

	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
Correct Translat.	And uh, the Reverend always signed all the checks?	Correct. Translat.	That is correct.

COMMENTS

A. Upon listening to the tape of the GJ testimony, it appears that Kosaka did not correctly hear the tape and that her translation is therefore based on an erroneous transliteration.

B. (1) does not contain the word always, but Mochizuki's Japanese (2) does.

C. (4) is a response to (1).

PROSECUTOR'S QUESTIONS 1.	INTERPRETER'S ANSWER 4.
And did Reverend Moon write out the other portions of the check other than his signature?	No, no, he didn't do it.

	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
Correct Translat.	And, uh, were there such occasions that Reverend Moon writes by himself, other than (his) signature in other places like the amount?	Correct. Translat.	There aren't. There aren't.

COMMENTS

A. (1) asks did, Mochizuki's Japanese (2) asks does.

B. Mochizuki's Japanese (2) specifies writing the amount, although (1) does not mention this.

C. Mr. Kamiyama's Japanese responds to Mochizuki's Japanese (2) which asks does; (4) states did, although Japanese states does.

D. (4) is ambiguous response to (1).

PROSECUTOR'S QUESTIONS 1.	INTERPRETER'S ANSWER 4.
You prepared all the checks for him?	That's correct.

	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
Correct Translat.	That is to say, is it that (you or someone) filled out all other places except for the signature so that (you or someone) asked for a signature?	Correct. Translat.	Yes.

COMMENTS

A. Mr. Kamiyama's Japanese is soo desu, not unclear.

B. Mochizuki's Japanese (2) does not ask all the checks, but other portions or places.

C. Mochizuki's Japanese (2) does not ask you prepared, it is unspecified.

D. Mochizuki's Japanese (2) assumes Mr. K first prepared the checks and then the Reverend Moon signed them; (1) does not have this assumption.

E. (1) asks 'for him' which means 'for his benefit'; Mochizuki's Japanese (2) asks 'for his (or the) signature which may or may not be for his benefit.

F. Not clear from this who prepared the checks and who asked Rev. Moon for a signature. It could be Mr. Kamiyama, or it could have been someone else, in which case (4) is agreeing to the fact that someone else did these things.

G. (4) is not a response to (1).

PROSECUTOR'S QUESTIONS 1.	INTERPRETER'S ANSWER 4.
Did Reverend Moon ever write any portion of the checks on the Chase Manhattan account other than his signature?	He never wrote anything other than his own signature as far as I remember.

	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
orrect ranslat.	(repeating the question)]: In other places than signature, ah, did Rev. Moon write in some things by himself? like the date or anything other than his signature?	Correct. Translat.	The Reverend has never written anything other than the signature, as far as I know.

COMMENTS

A. This question had to be repeated although the repetition is not part of the indictment.

B. Mr. Kamiyama's Japanese is not a response to Mochizuki's Japanese (2), but to the repetition which is not part of the indictment.

C. Not clear in Mochizuki's Japanese (2) who is doing the writing.

D. Mr. Kamiyama's Japanese states as far as I know and (4) states as far as I remember

E. The following differences were found upon listening to the tapes of the grand jury testimony, between what was actually said and what was transcribed in the indictment. (4)- He never wrote anything other than his (own) signature as far as I remember. (in parenthesis, not on tape.)

F. (4) is a response to (1).

PROSECUTOR'S QUESTIONS 1.	INTERPRETER'S ANSWER 4.
So to your knowledge he never wrote anything but the signature, is that correct?	To the best of my knowledge, Reverend never affixed anything other than the signature in the book, in the check.

	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
ct lat.	That is to say, as far as you know, Rev. Moon has never written anything other than the signature on the check, is that (right)?	Correct. Translat.	Yes, as far as I know, he has done nothing but sign.

COMMENTS

A. Mochizuki's Japanese (2) inserts the phrase on the check although it is not in (1).

B. Mochizuki's Japanese (2) does not contain the phrase is that correct although it is in (1).

C. Mr. Kamiyama's Japanese does not contain the phrase(s) in the book, in the check, although this is in (4).

D. (4) is a response to (1).

PROSECUTOR'S QUESTIONS 1.	INTERPRETER'S ANSWER 4.
We are talking about the Chase Manhatten checking account which was opened solely in his name; is that clear?	Yes, that's correct. But I regarded it as Reverend Moon who represented the International Unification Church.

	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
Correct Translat.	That account of the Chase Manhattan Bank is solely under the Reverend's own name, isn't it? Nothing to do with [his] wife?	Correct. Translat.	Yes. Right. But I thought it was Reverend Moon who was representing the International Unification Church.

COMMENTS

A. (1) seeks to ensure that the comments made immediately prior to this were concerned with Rev. Moon's actions in the respect to the Chase Manhattan Bank; Mochizuki's Japanese (2) does not do this, it merely confirms that the Chase Manhattan account was in the Rev. Moon's name.

B. Mr. Kamiyama's Japanese confirms the account is in the Rev. Moon's name; it does not confirm that Mr. K is clear that the immediately prior discussion concerned the Chase Manhattan checking account.

C. (1) specifies "checking account" - Mochizuki's Japanese (2) says only koza (account).

D. Mr. Kamiyama's Japanese may be responding to the plural interpretation of deposits in Mochizuki's Japanese (2) rather than deposit in (1) in which case (4) is not a clear response.

E. (4) is ambiguous response to (1).

COUNT 11

PROSECUTOR'S QUESTIONS 1.	**INTERPRETER'S ANSWER**
Now, what was the largest deposit, single deposit that was made into Reverend Moon's account?	I think it was around four hundred thousand dollars.

	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		**MR. KAMIYAMA'S ACTUAL ANSWER** 3.
Correct Translat.	Um, as for the amount accumulated in the Reverend's account, how much was the largest amount?	Correct. Translat.	I think it was about $400,000. I don't remember the precise sum exactly.[30]

COMMENTS

A. 2 J talks in terms of accumulated, not deposited.

B. (4) is not a response to (1).

	PROSECUTOR'S QUESTIONS 1.		INTERPRETER'S ANSWER 4.
	Who deposited that money?		I don't remember who I asked to do so. One thing is for sure, I didn't do it myself
	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
orrect ranslat.	As for that, who was it that deposited (it)?	Correct. Translat.	I don't remember who I asked. It's a fact that I don't go.

COMMENTS

A. Mochizuki's Japanese (2) does not have the Japanese word for money in it although the word money is in (1).

B. Mr. Kamiyama says nothing like "one thing is for sure", as in (4).

C. Mr. Kamiyama's Japanese says Mr. K doesn't go (to the bank); (4) says Mr. K didn't do it.

D. (4) is not a response to (1).

PROSECUTOR'S QUESTIONS 1.	INTERPRETER'S ANSWER 4.
And where did you get the money, that four hundred thousand dollars, to deposit in Reverend Moon's account?	From Family Fund.

	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
rrect anslat.	That $400,000, as for that, as for the origin, where was it?	Correct. Translat.	Family fund(s).

COMMENTS

A. (1) asks where Mr. K received the money which was to be used for the purpose of depositing in Rev. Moon's account, and Mochizuki's Japanese (2) does not mention this.

B. Mr. Kamiyama's Japanese says that the origin of the money was the family fund, but it does not say that Mr. K physically received the money. This is implied in (4).

D. The following differences were found upon listening to the tapes of the grand jury testimony, between what was actually said and what was transcribed in the indictment. (1) - And where did you get the money, that four hundred thousand dollars, to deposit (in Reverend Moon's account)? (in parenthesis not on tape).

E. (4) is not a response to (1).

	PROSECUTOR'S QUESTIONS 1.		INTERPRETER'S ANSWER 4.
	And where was the money actually at the time before you deposited it into Moon's account?		I wasn't physically in charge for that fund. But I may have asked Miss Tomoko Torii, T-o-m-o-k-o
	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
Correct Translat.	Well, (you say) it's the Family Fund, but where was it actually? That four hundred thousand dollars, right before you saved (in the bank)?	Correct. Translat.	Since I wasn't directly in charge of that money, since I went to ask (someone). But I may have asked Miss Tomoko Torii, but without clear recollection.

COMMENTS

A. Mochizuki's Japanese (2) uses the verb tsumitateru which means to "save", not "deposit", there is no expression equivalent to "into Moon's account".

B. Mochizuki's Japanese (2) specifies that the money was from the Family Fund; (1) does not do this.

C. Mochizuki's Japanese (2) specifies $400,000 while (1) does not.

D. Mr. Kamiyama's Japanese states that Mr. K asked someone else to take care of the fund.

E. (4) says Mr. K was not physically in charge of the fund; in Mr. Kamiyama's Japanese he states that he was not directly in charge.

F. The following differences were found upon listening to the tapes of the grand jury testimony, between what was actually said and what was transcribed in the indictment. (1) - And where was the money actually at (that) time before you deposited it into these accounts)? (indictment says "the" time and "into Moon's account.")

F. (4) is ambiguous response to (1).

PROSECUTOR'S QUESTIONS 1.	**INTERPRETER'S ANSWER** 4.
Well, where did the four hundred thousand dollars--how did you get the four hundred thousand dollars that you deposited into Rev. Moon's account?	Over the years, our brethren from Japan, who came to USA, they contribute, and it was accumulated.

	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		**MR. KAMIYAMA'S ACTUAL ANSWER** 3.
orrect anslat.	And this four hundred thousand dollars, in short, as for the source, where did it come from?	Correct. Translat.	Well, ah, many Japanese brothers and sisters, Japanese members, came to America, pretty many in number. Those people continuously collected the money which came, and, ah, that went into th account.

COMMENTS

A. El asks how Mr. K got the money; Mochizuki's Japanese (2) asks only for the source of the money and does not address the issue of Mr. K receiving the money.

B. (1) asks about the money which was deposited into Rev Moon's account; Mochizuki's Japanese (2) makes no mention of this deposit.

C. Mr. Kamiyama's Japanese contains a nonsensical statement (see English translation of second sentence); (4) treats this as if it makes sense. (sono hitotachi ga kita okane)

D. (4) states "over the years"; this is not in Mr. Kamiyama's Japanese.

E. Mr. Kamiyama's Japanese states that "many brethren came to the States"; there is mention of number in (4).

F. Mr. Kamiyama's Japanese says that some unspecified person collected the money and that the money entered the account; there is no word in Mr. Kamiyama's Japanese for 'contribution' as there is in (4).

G. There is nothing in the Japanese version which indicates that the brethren from Japan contributed anything.

H. Mr. Kamiyama says certain money was gathered or collected, but that he does not say there there is any connection between these people from Japan and the money.

I. The following differences were found upon listening to the tapes of the grand jury testimony, between what was actually said and what was transcribed in the indictment. (1) (Well, where did the four hundred thousand dollars)--how did you get the four hundred thousand dollars that (was) deposited in (Reverend) Moon's account? (First parenthesis not heard on tape), (Second parenthesis says "you" in indictment), (Third parenthesis says "into Moon's account" in indictment.)

J. (4) is not a response to (1).

PROSECUTOR'S QUESTIONS 1.	INTERPRETER'S ANSWER 4.
	I remember that there are at least about seven hundred coming to the U.S.A.

	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
t.		Correct. Translat.	I recall that about seven hundred people came.

COMMENTS

A. This is a continuation of the answer to 118.

B. Mr. Kamiyama's Japanese says about 700 people came, while (4) says at least 700 people came.

C. (4) says there are at least 700 brethren coming, which could mean they have yet to arrive; Mr. Kamiyama's Japanese says they came.

D. (4) is ambiguous response to (1) (previous page).

PROSECUTOR'S QUESTIONS 1.	INTERPRETER'S ANSWER 4.
Was any of the money in the family fund ever used to pay expenses for the Japanese members who had come to New York?	No. We never did that.

	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
orrect ranslat./ ranslit.	And then, from the family fund did (someone) ever use the money to pay for those Japanese brethren to go to the U.S., to come to the U.S. Yes, expenses for coming here like air fare, living expenses and so on, did (someone) ever use this Family Fund as expenses?	Correct. Translat.	To go to the U.S.? To come here? (unclear)

COMMENTS

A. The answer (4) is unclear, since Mr. K. had difficulty understanding the interpreter's question, I wonder how it is interpreted this way?

B. The interpreter first uses the expression tobei which means "go to America" or "immigrate to America" and then changes this to raibei which means "come to America". This is what causes Mr. K to ask for clarification.

C. (1) asks if the money is used to pay for expenses for those members who had come. Mochizuki's Japanese (2) asks if the money is used to pay for the expenses of coming to America and living expenses while in America rather than being used to pay for the expenses of Japanese of Japanese members who had come to New York. The negative response in (4) may be responding to the air fare which is inserted in Mochizuki's Japanese (2) but which is not part of (1).

D. (1) asks "was the money used" (a passive construction without specified agent).
Mochizuki's Japanese (2) asks "did you use the money (you is understood).

E. The following differences were found upon listening to the tapes of the grand jury testimony, between what was actually said and what was transcribed in the indictment. (1) - Was any of the money in the family fund ever used to pay expenses for the Japanese members who had come to (America)? (Indictment says New York).

F. (4) is ambiguous response to (1).

PROSECUTOR'S QUESTIONS 1.	INTERPRETER'S ANSWER 4.
So why didn't you put this money in a bank account?	Part of which was put into the bank, and the balance was kept.

	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
ect slat.	Why did you put this, this money, into the bank account? This Family Fund.	Correct. Translat.	[I] put in a portion. The church kept a portion.

COMMENTS

A. Mochizuki's Japanese (2) asks why did you put the money into a bank account, rather than why didn't you.

B. Mochizuki's Japanese (2) inserts the phrase "this Family Fund" which is not in (1).

C. (4) states that the "balance" was kept; Mr. Kamiyama's Japanese talks only of two portions which may or may not equal 100%.

D. Mr. Kamiyama's Japanwse states that the church kept a portion while (4) uses a truncated passive which does not state who the money was kept by.

E. (4) is not a response to (1).

PROSECUTOR'S QUESTIONS 1.

Well, did you have a bank account in the name of the Family Fund?

WHAT INTERPRETER TOLD MR. KAMIYAMA 2.

orrect
ranslat.

Did (you) have a bank account in the name of the Family Fund?

Correct.
Translat.

MR. KAMIYAMA'S ACTUAL ANSWER 3.

(I) don't have (one).

INTERPRETER'S ANSWER 4.

No.

COMMENTS

A. No comments of substance.

B. (4) is response to (1).

PROSECUTOR'S QUESTIONS 1.

Why did you use Reverend Moon's name for the Family Fund?

INTERPRETER'S ANSWER 4.

As the money came from overseas, and part of that money may become necessary as expenses to take of care the brethren we put it into Reverend Moon's name, who legitimately represents International Unification Church.

WHAT INTERPRETER TOLD MR. KAMIYAMA 2.

ct
lat.

Well, then, why did you borrow the Reverend Moon's name for the Family Fund?

Correct.
Translat.

MR. KAMIYAMA'S ACTUAL ANSWER 3.

Well, as for that, the reason the reason (someone) put the money which came from overseas into the account which has the name of Rev. Moon, who represents the International Unification Church, is because when our foreign brethren came from overseas (I, we) deposited a portion of the money into it. I had them keep a portion in cash from which it was paid as expenses in case an emergency occurred.

COMMENTS

A. (1) states use; Mochizuki's Japanese (2) states borrow (kariru).

B. Mr. Kamiyama's Japanese is tautological and if it had been translated precisely, Mr. Flumenbaum would have had to ask for a clarification.

C. Mr. Kamiyama's Japanese says that it was money which came from overseas (gaigoku kara kita kane) while (4) suggests that because the money came from overseas there was some relevance.

D. (4) states that the money would be used to take care of the brethren, Mr. Kamiyama's Japanese states that the money would be used in an emergency.

E. No distinction between portions of money in (4) although there is in Mr. Kamiyama's Japanese.

F. Mr. Kamiyama's Japanese states that Mr. K had someone keep a portion of the money, this is not in (4).

G. Contribution is not mentioned in (4) although it is in Mr. Kamiyama's Japanese.

H. Mr. Kamiyama's Japanese says, in effect, that "the reason someone put the money into the account". This is transformed in (4) to say "we put it into Rev. Moon's income." This gives the appearance of answering (1), although Mr. Kamiyama's Japanese does not.

I. (4) is not a response to (1).

COUNT 12

PROSECUTOR'S QUESTIONS 1.	INTERPRETER'S ANSWER 4.
Let me show you what has been marked--before I do that--in January 1974 you bought $100,000 worth of stock in Tong Il; correct?	Yes.

	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
'rect nslat.	In January 1974, did you buy a hundred thousand dollars worth of Tong Il stock?	Correct. Translat.	Yes.

COMMENTS

A. No comments of substance.

B. (4) is response to (1).

PROSECUTOR'S QUESTIONS 1.	INTERPRETER'S ANSWER 4.
And you got that hundred thousand dollars from the family fund?	Correct.

	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
'ect slat.	That hundred thousand dollars came into [your] hands from the family fund(s), correct?	Correct. Translat.	That's correct.

COMMENTS

A. (4) is a response to (1).

PROSECUTOR'S QUESTIONS 1.	INTERPRETER'S ANSWER 4.
Did you tell Reverend Moon that you were buying additional stock in Tong Il at that time?	No, I didn't.

	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
orrect ranslat.	And around that time, did you tell Rev. Moon that (you) had intentions of wanting to buy some other stock(s) again later?	Correct. Translat.	I didn't tell him.

COMMENTS

A. Mochizuki's Japanese (2) asks if Mr K told Rev Moon that he had intentions of buying stock rather than that he was going to buy stock, as in (1).

B. The phrase ato mata in Mochizuki's Japanese (2) makes it sound as if he is being asked if he had intentions of buying additional stock at a later date.

C. Not really clear who has the intention to buy stock.

D. (4) clearly does not respond to (1).

E. The expression "at that time" is ambiguous, as it can refer to the time Mr. Kamiyama told the Rev. Moon something or the time that Mr. Kamiyama bought additional stock.

F. Mr. Kamiyama's Japanese response is mistranscribed. It should be hanashite imasen. It means "I didn't tell him." But it is not clear which of these two things he did not tell - the intention to wanting to buy stock or the deed - the actual buying of stock. One can have no intention of wanting to buy stock, and then at a later point buy some anyway.

G. (4) is not a response to (1).

PROSECUTOR'S QUESTIONS 1.	INTERPRETER'S ANSWER 4.
Did you discuss with him the reason why you were buying stock in Tong Il?	I don't dare consult with him on such matters.

	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
Correct Translat.	Uh, did (someone) ever talk with Reverend Moon about something like the reason for (someone's) buying stock in Tong Il?	Correct. Translat.	I don't consult with him about that kind of thing.

COMMENTS

A. (4) uses the word dare and this is not in Mr. Kamiyama's Japanese.

B. (4) is ambiguous response to (1).

PROSECUTOR'S QUESTIONS 1.	INTERPRETER'S ANSWER 4.
Did you ask him if it was proper for you to own more stock in Tong Il than Reverend Moon?	No, I didn't talk with him about it.

	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
Correct Translat.	And, uh, have you ever talked with (someone) about the fact of your owning a higher percentage of the shares than he, about the appropriateness of that?	Correct. Translat.	No, I haven't.

COMMENTS

A. Words added in with some focus on percentages.

B. (4) is ambiguous response to 1E.

PROSECUTOR'S QUESTIONS 1.	INTERPRETER'S ANSWER 4.
Did you have any conversations with anyone as to whether or not it was proper for you to own more shares of stock in Tong Il than Reverend Moon?	I didn't even think about it a bit.

	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
rect nslat.	Uh, have you ever talked with anyone about something like whether it is proper for you to have more stocks in Tong Il than Reverend Moon?	Correct. Translat.	Such a thing never occurred to me.

COMMENTS

A. sore wa in Mr. Kamiyama's Japanese means that. It may refer either to the fact that Mr K didn't even think about having such a conversation with anyone, or it may refer to the fact that Mr K didn't even think of owning more shares of stock than Rev Moon.

B. (4) is not a response to (1).

COUNT 13

PROSECUTOR'S QUESTIONS 1.

Did you ever tell Michael Warder to tell government investigators that he got $5000 to purchase stock in Tong Il from relatives or friends? Did you ever tell him to give that explanation to anyone?

INTERPRETER'S ANSWER 4.

I didn't do it.

WHAT INTERPRETER TOLD MR. KAMIYAMA 2.

orrect
ranslat.

Uh, to Mike Warder, ah that (someone) received five thousand dollars from relatives or such; and with that money, ah, (someone) decided to buy the stock, and if a government inquiry (summons?) or something came in, have (you) ever told him such a thing as to make a statement?

MR. KAMIYAMA'S ACTUAL ANSWER 3.

Correct.
Translat.

I haven't.

COMMENTS

A. The use of the pronoun watashi meaning I in Mr. Kamiyama's Japanese suggests a contrast: I didn't, but perhaps someone else did.

B. Not clear in Mochizuki's Japanese (2) that MW is the one who is to purchase stock; thus the negative response in Mr. Kamiyama's Japanese may be negating that.

C. (4) is not a response to (1).

PROSECUTOR'S QUESTIONS 1.	INTERPRETER'S ANSWER 4.
Did you ever tell Mike Warder to give a false explanation as to how he paid for his stock in Tong Il?	No, I didn't.

	WHAT INTERPRETER TOLD MR. KAMIYAMA 2.		MR. KAMIYAMA'S ACTUAL ANSWER 3.
rrect anslat.	Uh, concerning the details of Mike Warder's buying stock, have you ever (perhaps haven't you ever) told Mike Warder to make a false statement? investigators came in, than you should state that way, have you ever said that?	Correct. Translat.	I haven't.

COMMENTS

A. There is no verb in Mochizuki's Japanese (2) and so it is not clear whether this will be an affirmative question or a negative question; if it is negative, then it carries presuppositions not in Mr. Flumenbaum's original question.

B. Mike Warder's buying stock in Mochizuki's Japanese (2), and MW's paying for stock in (1).

C. use of watakushi in Mr. Kamiyama's Japanese suggests perhaps someone else did.

D. (4) is ambiguous response to (1).

Indictment 82 Cr. 194
Count 1

G.J. Transcript [This Question Was Not in Count 12 / But in Count 1 As Translated in (2) Below]	6. G.J.Transcript [This Answer Was Not in Count 12 /But is in Count 1 as Translated in (5) Below].
PROSECUTOR'S QUESTIONS	INTERPRETER'S ANSWER
Tell the grand jury why you bought a thousand shares of Tong Il in January 1974.	There was a dire need for Unification Church to grow, for the expansion, and we needed it. Anything wrong with it?

2. PROSECUTOR'S QUESTION AS TRANSLATED BY COURT APPOINTED TRANSLATOR [This appears in New Count 1 Question in Fact Broken Up With Colloquy Between Prosecutor and Interpreter.]

Well, I want you to tell this grand jury
from your own mouth, that in January
1974 you purchased 1,000 shares of stock?
(* Omitted Colloquy - see next page 2)
Why did you purchase it?

5. Court Appointed Translation
NEW COUNT 1--MR. K.'s ANSWER

Translat./
[Court-
Appointed]

That's because for the future development of the Unification Industry, the money was necessary. In order for the development, that money . . . (unclear)
Is there something wrong?

3. Hind's Translation
WHAT INTERPRETER TOLD Mr. K.

Correct

Translat.

[Hinds]

Um, to this grand jury, I'd like to have you say from your own mouth, you bought 1000 shares of stock in January 1974, right? So, ...

4. Hind's Translation
MR. KAMIYAMA'S ACTUAL ANSWER

That is to say . . . for the Tooitsu Industry to develop in the future, money was necessary.
So the money . . . .
Is there anything strange?

Comments

A. Mochizuki's Japanese (2) does not specify that this is Tong Il stock, it says simply stock.

B. (4) states 'the money', Mr. Kamiyama in Japanese states only 'money', not necessarily the same money under discussion.

C. Mr. Kamiyama is first asked to make a statement of fact about having purchased shares of stock. After the colloquy, he is asked to explain why. The question as put to Mr. Kamiyama by the interpreter, is much more complicated than the original quetion.

Count 1

COLLOQUY PORTION GRAND JURY TRANSCRIPT AND OMITTED FROM NEW COUNT 1 EVEN THOUGH APPEARS IN MIDDLE OF QUOTED EXCHANGE.

Interpreter's Question to Prosecutor

Oh, did you ask why?

2. What Interpreter Told Mr. Kamiyama
Not translated for Mr. Kamiyama.

Prosecutor's Response to Interpreter
Tell the grand jury why.

Correct Translat./ . . . why you bought . . . .

4. What Interpreter Told Mr. Kamiyama

The interpreter continued the question to Mr. Kamiyama after the colloquy. (See (2) previous page.) See also letter C of Comments, previous page.

G.J. Transcript (orig. Count 12)
PROSECUTOR'S QUESTIONS 1.

Did he say Unification Church
or Tong Il?

Court Appointed Translation 2.
New Count 1 Quotes This Translation
-Not Original English--PROSECUTOR'S QUESTION

Well, you said for the expansion of
the Church . . . .

Correct
Translat./

Hinds' Translation
WHAT INTERPRETER TOLD Mr. K. 3.

rrect
ans./

Well, you said for the expansion of
the Church . . . .

G.J.Transcript (Orig. Count 12)
INTERPRETER'S ANSWER 6.

I repeat,for the expansion of Tong Il enterprise we thought it's necessary that this had to be taken care of and I might make one explanation.

That is Tong Il Enterprises is called in Japanese "Tooitsu" which means unification in three languages. Phonetically there are three different names, what appears to be different names, but representing the same thing. One in Korean, one in Japanese and one in English.

Court Appointed Translation
NEW COUNT 1 Quotes This Translation 5.
-Not Original English--MR. K's ANSWER

"To"itu" in English is"unification,"in Korean it's "Tong Il." In Japanese it's "To:itu." Thus the name of the company is Tong Il Enterprise. That's why. For the purposes of the development of Tong Il Enterprises, to expand the business in the future, (the money) was necessary and I put it there. (Mr. Kamiyama Continued But Omitted From Count 1 See page 4)

Hinds' Translation
MR. KAMIYAMA'S ACTUAL ANSWER 4.

If (I) say (it) now, the thing called 'toitsu' Kor-- I . . . the thing called 'toitsu,' uh, if you say it in English, it's 'unification.' If you say Tong Il,' uh, if you say it in Korean, it's 'Tong Il.' If you say it in Japanese it's 'toitsu.' Therefore, the name of the company is 'Tong Il Enterprise.' So, in order to develop Tong Il Enterprise, in the future to expand the business, it's necessary, so (I) put (it) in there.

Comments

A. Mochizuki's Japanese (2) asks the question in the negative, suggesting there are other reasons; (1) does not do this.

B. In Mr. Kamiyama's Japanese there is nothing equivalent to still insist, nor to and I can't remember any other, as there is in (4).

C. (4) is no response to (1).

G.J. Transcript (orig. Count 12)
PROSECUTOR'S QUESTIONS 1.

See page 3.

Court Appointed Translation
New Count 1--PROSECUTOR'S QUES. 2.

See page 3.

Hinds' Translation
WHAT INTERPRETER TOLD Mr. K. 3.

orrect
ranslat./

See page 3.

Hinds' Translation
MR. KAMIYAMA'S ACTUAL ANSWER 4.

Not yet translated.

Court Appointed Translation
NEW COUNT 1--MR. K.'s ANSWER 5.

Thus Tong Il is what I call in Japanese "To:itu Sangyo" (To:itu Industry). In Japanese, it's "To:itu Sangyo."

GJ.Transcript (Orig. Count 12)
INTERPRETER'S ANSWER 6.

See page 3.

Comments

	G.J. Transcript (orig. Count 12) **PROSECUTOR'S QUESTIONS** 1. As you sit here, do you recall any other reasons other than an investment in Tong Il?		GJ.Transcript (Orig. Count 12) **INTERPRETER'S ANSWER** 6. At any rate, I still insist that for the sake of expansion I did so, and I can't remember any other.
	Court Appointed Translation **New Count 1--PROSECUTOR'S QUES.** 2. And, now here, you are in the court Can't you recall that there were some other, more reasons?	Correct Translat./	Court Appointed Translation **NEW COUNT 1--MR. K.'s ANSWER** 5. At any rate, (I) put it in the sake of development.
rect nslat./	Hinds' Translation **WHAT INTERPRETER TOLD Mr. K.** 3. And, now here, you are in the court Can't you recall that there were some other, more reasons?		Hinds' Translation **MR. KAMIYAMA'S ACTUAL ANSWER** 4. At any rate (it) is for the sake of the development that (I) put (it) in.

Comments

A. Mochizuki's Japanese asks the question in the negative, suggesting there are other reasons; (1) does not do this.

B. In Mr. Kamiyama's Japanese there is nothing equivalent to still insist, nor to and I can't any other, as there is in (4).

C. (4) is no response to (1).

G.J. Transcript (orig. Count 12)
PROSECUTOR'S QUESTIONS 1.

Were you having any immigration problems at the time?

Court Appointed Translation
New Count 1--PROSECUTOR'S QUES. 2.

Well, at the time, did you have problems with the immigration office, say about the entry into this country, visa problem . . . ?

Hind's Translation
WHAT INTERPRETER TOLD Mr. K. 3.

:
it./

Uh, at the time did you have some kind of disputes (or troubles with the Immigration Office?

With the immigration office, say about the entry into this country, problems about visa . . . .

Hind's Translation
MR. KAMIYAMA'S ACTUAL ANSWER 4.

197 . . . what does it mean? By immigration?
I didn't have any problems.

Court Appointed Translation
NEW COUNT 1--MR. K.'s ANSWER 5.

197 with the immigration?
I didn't have any problem.

GJ.Transcript (Orig. Count 12)
INTERPRETER'S ANSWER 6.

No, I didn't experience problems with them.

Comments

A. Mochizuki's Japanese asks if there were problems with the Immigration Office; (1) asks about problems with immigration.

B. Mochizuki's Japanese states trouble with visas or entering the country; (1) does not specify them.

C. Mr. Kamiyama's Japanese may be responding to part of Mochizuki's Japanese concerned with entering the country.

D. (4) is not a response to (1)..

G.J. Transcript (orig. Count 12)
PROSECUTOR'S QUESTIONS 1.

Did you purchase a share in Tong Il in order to enable you to stay in the United States for longer period of time?

Court Appointed Translation
New Count 1--PROSECUTOR'S QUES. 2.

Well, you purchased Tong Il stock, but didn't you do this as a means to legalize your stay in this country and in order to prolong your stay here?

Hinds' Translation
WHAT INTERPRETER TOLD Mr. K. 3.

Hinds' Translation
MR. KAMIYAMA'S ACTUAL ANSWER 4.

Court Appointed Translation
NEW COUNT 1--MR. K.'s ANSWER 5.

I would like to consult my lawyer.

GJ.Transcript (Orig. Count 12)
INTERPRETER'S ANSWER 6.

May I have a word with my counsel?

orrect anslat./	Well, (someone) obtained shares in Tong Il, but as for that, wasn't there a means to legalize your stay in this country and to make your stay longer?	I would like to consult my lawyer for just a second.

Comments

A. Mochizuki's Japanese is negative implying that the reason is correct; (1) does not do this.

B. Not clear who bought the shares in Mochizuki's Japanese; it is in (1).

C. No reference to "legalize your stay" in (1), but there is in Mochizuki's Japanese (gohoka shite)

D. (4) is not a response to (1).

G.J. Transcript (orig. Count 12) PROSECUTOR'S QUESTIONS 1.		GJ.Transcript (Orig. Count 12) INTERPRETER'S ANSWER 6.
Did you make your investment in Tong Il in part for the purpose of obtaining the right to stay in the country for a longer period? of time?		I want you to know sir, that I did that investment purely for the expansion of the Tong Il Enterprises.
Court Appointed Translation New Count 1--PROSECUTOR'S QUES. 2.		**Court Appointed Translation** NEW COUNT 1--MR. K.'s ANSWER 5.
Well, you invested in Tong Il, but did you do so although it may not be the sole purpose, in part to enable you to prolong your stay or your desires to stay in this country legally?	Correct Translat./	As I have told you earlier, it was the for purpose of the development of Tong Il Enterprises that I invested in that and I want you to know that.

rrect
anslat./

Hinds' Translation
WHAT INTERPRETER TOLD Mr. K. 3.

Uh, you (or someone) invested in Tong Il but even though that is not the whole purpose, did you do it to enable you to prolong your stay in this country legally?

Hinds' Translation
MR. KAMIYAMA'S ACTUAL ANSWER 4.

As I said before, it was for the purpose of the development of Tong Il Enterprise. that I invested in that, and I want you to know that.

Comments

A. Mochizuki's Japanese is not clear who invested in Tong Il; (1) is.

B. Mr. Kamiyama's Japanese does not contain the word purely. any other, as there is in (4).

C. (4) is not a response to (1).

G.J. Transcript (orig. Count 12)
PROSECUTOR'S QUESTIONS 1.

And your visa or immigration matters didn't enter into that at all, is that correct?

GJ.Transcript (Orig. Count 12)
INTERPRETER'S ANSWER 6.

I took that step purely for the expansion of Tong Il Enterprises.

Court Appointed Translation
New Count 1--PROSECUTOR'S QUES. 2.

Then, can you say that it never entered in your mind such problems as a visa problem or with the Immigration, and that they have nothing to do with it?

Correct
Translat./

Court Appointed Translation
NEW COUNT 1--MR. K.'s ANSWER 5.

I invested for the development of Tong Il Enterprises (in Japanese) . . . Tong Il Enterprises (he repeats it in English).

	Hinds' Translation WHAT INTERPRETER TOLD Mr. K. 3.	Hinds' Translation MR. KAMIYAMA'S ACTUAL ANSWER 4.
Correct Translat./	Then, ah, in your mind, visa problem, immigration problem, or such a thing was no concern at all, nothing to do with (you) . . . can you say that?	(I) put (it) in for the development of Tooitsu Sangyo, ah, Tong Il Enterprises.

Comments

A. No use of word purely in Mr. Kamiyama's Japanese but it is in (4).

B. Negative question in Mochizuki's Japanese, affirmative to (1).

C. (4) is ambiguous response to (1).

SUPPLEMENTAL EXHIBIT 2

DECLARATION

1. I, Tomoko Torii, currently live in 5-13-1, Takenozuka, Adachi-ku, Tokyo, Japan, and am a house wife.

2. During the period 1973-1976, I participated in the campaigns conducted on behalf of the International Unification Church movement in the United States.
I was also responsible for performing accounting functions for the Japanese Family Fund from 1973 when I succeeded the responsibility from Yoko Yamanishi, to 1976.

3. I remember that on several occasions I cashed checks at the request of Mr. Onuki and other church members. I cashed these checks using monies from the Japanese Family Fund.

4. During the period in which I performed accounting functions for the Japanese Family Fund, we were very busy because of the extensive campaign activities.
Thus, I did not report to Mr. Kamiyama all of the details surrounding various activities concerning the Japanese Family Fund, such as the cashing checks for church members.
Before I returned to Japan, I gave Yukiko Matsumura the fragmentary notes received from Yoko Yamanishi as well as my own brief note.

I swear under the penalty of perjury that the above statements are true and correct.

Tomoko Torii
Tomoko Torii

Dec. 9, 1984

SUPPLEMENTAL EXHIBIT 3

DECLARATION OF KENJI ONUKI

Kenji Onuki declares under penalty of perjury as follows:

1. I, Kenji Onuki, currently reside at Belvedere Estate, 723 Broadway, Tarrytown, New York. I acted as a chauffer for Reverend Sun Myung Moon between 1973 and 1980.

2. On several occasions during the period 1973-1975, I was asked by Church members to assist them in cashing checks. I presented these checks to the person who was responsible for performing accounting functions related to the Japanese Family Fund. Then the checks were cashed using money in the Japanese Family Fund.

3. On various occasions during the same period, I was also asked to deposit monies from the Japanese Family Fund, which included the checks described above, into the Chase Manhattan Bank accounts.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge. Executed on December 10, 1984.

Kenji Onuki

Kenji Onuki

SUPPLEMENTAL EXHIBIT 4

DECLARATION OF YUKIKO MATSUMURA

Yukiko Matsumura declares under penalty of perjury as follows:

1. I, Yukiko Matsumura, currently reside at 481 8th Ave., NY, NY.

2. I assumed the responsibility for performing accounting functions for the Japanese Family Fund from Tomoko Torii in 1976.

3. I made several corrections to the Japanese Family Fund Ledger by pasting new entries over the original entries in August 1977. However, these corrections were made at the suggestion of Mr. Robert H. Elliott, Jr., a tax attorney with the Washington DC law firm of Caplin & Drysdale. The corrections were not designed to mislead the IRS investigation.

I swear under the penalty of perjury that the foregoing statements are true and correct.

Yukiko Matsumura

Yukiko Matsumura

January 29, 1985

WHITMAN & RANSOM

MEMORANDUM

TO:	Mr. Mitsuharu Ishii	OUR FILE NO. HE-52389-10 05141
FROM:	R.N. Inouye; R.F. Lawler	
RE:	U.S.A. v. Takeru Kamiyama	DATE: December 3, 1984

I

PREAMBLE

What follows is a memorandum analyzing the Court Interpreters Act as applied to the proceedings against Takeru Kamiyama. In reviewing this memorandum, it is important to note the following limitations:

1. The authors have not reviewed any transcript of the original grand jury proceedings, trial or appeal;
2. The authors have not reviewed any of the motions made pre-trial, post-trial or on appeal; and
3. The authors have relied solely on the information supplied to them by Messrs. Mitsuharu Ishii and Yuji Yokoyama.

Time constraints have further limited the authors' ability to research exhaustively the entire legislative intent of the Court Interpreters Act.

II

FACTUAL BACKGROUND

Takeru Kamiyama, a Japanese national, is a member of the Unification Church. He is an advisor to Reverend Sun Myung Moon, the founder and spiritual leader of the Church.

In 1982, Kamiyama was convicted of perjury, obstruction of justice, and aiding and abetting the filing of false tax returns following a jury trial before Judge Gerard L. Goettel in the United States District Court for the Southern District of New York. He was sentenced to concurrent terms of six months of prison. The Court of Appeals upheld the convictions on all counts, except one, which was dismissed. United States v. Sun Myung Moon, 718 F.2d 1210 (2d Cir. 1983).

On May 14, 1984, the Supreme Court denied Kamiyama's petition for certiorari. United States v. Sun Myung Moon, 80 L.Ed. 2d 818, 104 S.Ct. 2344 (1984).

Kamiyama is presently serving his sentence in the federal penitentiary in Danbury, Connecticut.

III

JUDICIAL HISTORY LEADING TO THE ENACTMENT OF THE COURT INTERPRETERS ACT

The evolution of the case law leading to the enactment of the Court Interpreters Act in 1978 has been toward a recognition of the need for foreign-language-speaking defendants to have competent interpreters in trial proceedings. This recognition has resulted in federal and state court holdings that failure to provide the defendant with a competent interpreter constitutes a denial of his constitutionally-guaranteed right to a fair trial and due process of law. Moreover, Congress has now made clear, by enacting the Court Interpreters Act of 1978 (the "Act"), 28

U.S.C. § 1827, that a non-English-speaking defendant has a recognizable right in having a court-appointed interpreter and has directed that the courts implement certification procedures for such interpreters.

Early in this century, the Supreme Court held that the decision to appoint an interpreter to help elicit the testimony of an English-handicapped defendant rested entirely in the discretion of the trial judge. Perovich v. United States, 205 U.S. 86 (1907). Although no constitutional arguments were advanced in support of the appointment of an interpreter in that case, after Perovich, courts dealing with the appropriateness of appointing an interpreter consistently held that an interpreter must be provided to ensure the integrity of the constitutional rights guaranteed by the Fifth, Sixth and Fourteenth Amendments.

Of particular concern to the courts, as evidenced by the case law on this subject, are a non-English-speaking defendant's rights: (1) to be informed of the nature and cause of the accusation, (2) to be confronted with the witnesses against him, and (3) to have assistance of counsel for his defense. Hence, in Terry v. State, 21 Ala. App. 100, 105 So. 386 (1925), one of the first decisions to reverse a conviction for failure to appoint an interpreter, the court held that the right of confrontation must include the defendant's right to understand the accusations and evidence presented against him and must include the means to defend against those charges. The constitutional underpinnings of Terry have been repeatedly followed and expanded upon by both federal and state courts. See, e.g., State v. Vasquez, 101 Utah 444, 121 P.2d 903 (1942); Garcia v. State, 151 Tex. Crim. 593, 210 S.W.2d 574 (1948); State v. Natividad, 111 Ariz. 191, 526 P.2d 730 (1974); United States v. Carrion, 488 F.2d 12 (1st Cir. 1973).

The increasing awareness shown by the courts of the unfairness of prosecuting a person who cannot understand the nature of the proceedings against him paved the constitutional road to the enactment of the Court Interpreters Act. The United States Court of Appeals for the First Circuit in Carrion concluded that "the right to confront witnesses would be meaningless if the accused could not understand their testimony...." 488 F.2d at 14. Non-English-speaking defendants must have a right to court-appointed interpreters because "no defendant should face the Kafkaesque spectre of an incomprehensible ritual which may terminate in punishment." Id. Similarly, the Supreme Court of Arizona, in Natividad, characterized an uninterpreted trial of a non-English-speaking defendant as "fundamentally unfair." 111 Ariz. at 194, 526 P.2d at 733.

In 1970, the leading case of United States ex rel. Negron v. New York, 434 F.2d 386 (2d Cir. 1970), by unequivocally declaring that a non-English-speaking defendant had a constitutional right to a court-appointed interpreter, finally enunciated a constitutional standard for courts and litigants to follow. The Spanish-speaking Negron, who sought a writ of habeas corpus, had sat in total incomprehension through his murder trial conducted in English, for only sporadic translated summaries of the proceedings had been afforded him. In holding that "the lack of adequate translation for [the defendant] of those portions of his ... murder trial which were conducted in English rendered the trial constitutionally infirm," 434 F.2d at 387, the court went beyond the constitutional right of confrontation of the Sixth Amendment. Invoking the due process clause of the Fourteenth Amendment, the court concluded that, because of the Government's failure to provide adequate and competent interpretation, the defendant's trial "lacked the basic and fundamental fairness" required by the Constitution. Id. at 389.

The earlier case of Ex parte Cannis, 173 P.2d 586 (Okl. Crim. 1946), had also relied upon the due process clause to overturn a conviction on the ground that an interpreter had been improperly denied. The Oklahoma Criminal Court of Appeals, in reviewing a rape prosecution marked by numerous constitutional violations, maintained that the "fair and impartial" trial guaranteed by the due process clauses in the Fourteenth Amendment of the United States Constitution and in Article II, Section 7 of the Oklahoma Constitution included the right to an interpreter when needed to enable the defendant to understand the proceedings.

The Second Circuit in Negron, echoing the reasoning of the court in Cannis, stated that

> the right that was denied Negron seems to us even more consequential than the right of confrontation. Considerations of fairness, the integrity of the fact-finding process, and the potency of our adversary system of justice forbid that the state should prosecute a defendant who is not present at his own trial, unless by his conduct he waives that right. And it is equally imperative that every criminal defendant -- if the right to be present is to have meaning -- possess "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding." Otherwise, "[t]he adjudication loses its character as a reasoned interaction...and becomes an invective against an insensible object."

434 F.2d at 389 (citations omitted).

The Negron opinion epitomizes the growing awareness and concern of the courts, prior to the enactment of the Court Interpreters Act, that non-English-speaking defendants were being deprived of vital constitutional rights. The courts have concluded that concerns regarding confrontation of witnesses, cross-examination, and adequacy of counsel involved in the refusal to provide an interpreter, work to deprive the non-English-speaking defendant of his right to a fair trial guaranteed by the due process clauses of the Fifth and

Fourteenth Amendments, as well as his specific rights under the Sixth Amendment. Indeed, noting its concurrence with the Negron decision and anticipating the passage of the Court Interpreters Act, the court in United States ex rel. Navarro v. Johnson, 365 F.Supp. 676 (E.D.Pa. 1973), stated in dictum that, "in cases to come the courts will recognize the implications of the constitutional problem when an interpreter is not present." Id. at 682 n.3.

The Negron court recognized, moreover, that the quality, and not merely the presence, of the interpreting services provided to the non-English-speaking defendant is critical in determining whether his constitutional rights have been protected. Holding that the lack of adequate translation rendered Negron's trial constitutionally infirm, the court enunciated the first constitutional requirement that "a court, put on notice of a defendant's severe language difficulty, [must] make unmistakably clear to him that he has a right to have a competent translator assist him, at state expense if need be, throughout his trial." 434 F.2d at 391 (emphasis added).

Still, the language of Negron left broad discretionary powers to judges in appointing interpreters and in determining their competency. Moreover, judges were placed in the untenable position of having to assess the linguistic proficiency of a language-handicapped litigant and, perhaps more importantly, the competence of an appointed interpreter -- a task for which they were not necessarily qualified. In the early 1970's, a study by the U.S. Commission on Civil Rights and one by the Institute for Court Management summarized these concerns and described the highly ineffective system of interpretation services used in the courts. U.S. Commission on Civil Rights, Mexican Americans and the Administration of Justice in the Southwest - United States Commission on Civil Rights - Report, March, 1970. Washington, D.C.: U.S.

Commission on Civil Rights, 1970; Institute for Court Management, Justicer System Interpreter Certification: Task Force Report. Los Angeles, CA, both cited in E. Arjona, "Language Planning in the Judicial System: A Look at the Implementation of the U.S. Court Interpreters Act", 9 Language Planning Newsletter No. 1, February 1983, East-West Culture Learning Institute, East-West Center, Honolulu, HA.

Subsequently, standards established by the Negron decision were codified into procedural and evidentiary statutes that regulated the appointment of court interpreters. These statutes, however, failed to adequately provide the language-handicapped defendant with the needed protection of his constitutional rights. This statutory deficiency prompted the introduction of legislation, such as the Bilingual Courts bills, precursor legislation for the Court Interpreters Act, which were introduced in 1973 by Senator Tunney and others. These bills were the first attempts to resolve the issues concerning court interpreters at the federal level. See S. 565/H.R. 8324 and H.R. 10228; S. 1724/H.R. 7728 and H.R. 7777, cited in Arjona, Language Planning, supra. The House of Representatives, however, did not complete action on either of these bills.

Finally, responding to the need for codified standards for court interpreters, the 95th Congress, building on the previous proposed legislation, unanimously passed the Court Interpreters Act in 1978.

IV

THE COURT INTERPRETERS ACT

The Court Interpreters Act (the "Act") was passed by Congress in October, 1978 and became effective in January, 1979.

As stated in the House Report, the purpose of the Act is "to require the appointment of interpreters, who have been certified by the Director of the Administrative Office of the U.S. Courts, in Federal, civil and criminal proceedings under specified conditions . . . and . . . to provide more effectively for the use of interpreters in Federal district courts." H.R. Rep. No. 95-1687, 95th Cong., 2d Sess. (1978), reprinted in 1978 U.S. Code Cong. & Ad. News 4652.

A. Pertinent Provisions of the Act

The provisions of the Act which are pertinent to the issues being addressed herein are as follows [28 U.S.C. § 1827(a) - § 1827(e)(1)]:

> (a) The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of interpreters in the courts of the United States.
>
> (b) The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters in the courts of the United States in bilingual proceedings . . . and in so doing, the Director shall consider the education, training and experience of those persons. The Director shall retain a current master list of all interpreters certified by the Director and shall report annually on the frequency of requests for, and the use and effectiveness of, interpreters . . .
>
> (c) Each United States District Court shall maintain on file in the office of the clerk of court a list of all persons who have been certified as interpreters, including bilingual interpreters . . . by the Director of the Administrative Office of the United States Courts in accordance with the certification program established pursuant to subsection (b) of this section.
>
> (d) The presiding judicial officer, with the assistance of the Director of the Administrative Office of the United States Courts, shall utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter, in any criminal or civil action initiated by the United States in a United States district court . . . if the presiding judicial officer determines on such officer's own motion or on the motion of a party that such party (including a defendant in a criminal case), or a witness who may present testimony in such action -
>
> > 1. speaks only or primarily a language other than the English language . . .
>
> so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such

witness' comprehension of questions and the presentation of such testimony.

(e)(1) If any interpreter is unable to communicate effectively with the presiding judicial officer, the United States attorney, a party (including a defendant in a criminal case), a witness, the presiding judicial officer shall dismiss such interpreter in accordance with this section.

B. Measures Mandated By The Act

The Act mandates the formulation and implementation of specific measures pertaining to the qualification and use of interpreters in the federal courts. The pertinent measures mandated by the Act are as follows:

1. The Director of the Administrative Office of the United States Courts (the "Administrative Office") is required to:

(i) "establish a program to facilitate the use of interpreters";

(ii) "prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters . . . and in so doing . . . consider the education, training, and experience of those persons"; and

(iii) "maintain a current master list of all interpreters certified by the Director."

2. If it is determined (by the presiding judicial officer or upon motion of a party in the proceeding) that because the defendant or witness is incapable of properly understanding and communicating in the English language, the presiding judicial officer, assisted by the Director of the Administrative Office, is required to "utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter."

3. The presiding judicial officer is required to dismiss an interpreter who is unable to effectively communicate

"with the presiding judicial officer, the United States attorney, a party (including a defendant in a criminal case), or a witness," and select another interpreter who is certified or qualified under the Act.

V

APPLICABILITY OF THE ACT TO GRAND JURY PROCEEDINGS

At the outset, a threshold question that must be addressed is whether the provisions of the Act apply to proceedings before the grand jury. The Act, by its terms, applies to "any criminal action or civil action initiated by the United States in a United States district court." 18 U.S.C. § 1827(d). Since the basis for any post-conviction challenge to Kamiyama's conviction hinges upon the adequacy of the translation of his testimony before the grand jury, two definitional issues immediately arise: first, whether the proceedings before the grand jury can be considered a "criminal action," and, if so, second, whether that action is "in a United States district court."

The Constitution mandates that no person shall be federally prosecuted for a felony without having been indicted by a grand jury. U.S. CONST. Amend. V; see Branzburg v. Hayes, 408 U.S. 665, 687 (1972). As Justice Frankfurter said in Cobbledick v. United States, 309 U.S. 323 (1940):

> The Constitution itself makes the grand jury a part of the judicial process. It must initiate prosecution for the most important federal crimes. It does so under general instructions from the court to which it is attached and to which, from time to time, it reports its findings. The proceeding before the grand jury constitutes a "judicial inquiry...."

Id. at 327.

As the above language suggests, the grand jury proceeding is an integral part of the criminal process, see In re April 1977 Grand Jury Subpoenas, 584 F.2d 1366, 1369 (6th Cir. 1978). As a result, one can conclude that the grand jury proceeding is also an integral part of a criminal action or proceeding.

The courts, however, at times have reached different conclusions as to whether grand jury proceedings are "criminal proceedings" within the meaning of various statutes. In Bacon v. United States 449 F.2d 933 (9th Cir. 1971), for example, the court concluded that a grand jury proceeding was a "criminal proceeding" under the statute and rule governing the power to arrest and detain a material witness. The court acknowledged that the term "criminal proceeding" was ambiguous and that there was a division of opinion among the courts which had dealt with the issue. Nonetheless, based to some extent on an analysis of language in a congressional act authorizing promulgation of the rules of criminal procedure, the court concluded that a grand jury investigation was a "criminal proceeding."

In contrast, in United States v. Thompson, 319 F.2d 665, 669 (2d Cir. 1963), the court held that a grand jury investigation was not a "criminal proceeding" under the Walsh Act regarding transnational subpoenas. The court, finding the term "criminal proceeding" ambiguous, relied on legislative history to reach its conclusion. An earlier version of the statute had used the phrase "at the trial of any criminal action" instead of "criminal proceeding." Relying on this earlier version, the majority held that Congress had not intended to encompass a grand jury investigation in the original statute and further concluded that Congress had not, despite the new language, intended any change in the revised version.

The dissent in Thompson did not interpret the term "criminal proceeding" so narrowly. The dissent referred to a Supreme Court opinion which noted that "[t]he word 'proceeding' is not a technical one, and is aptly used by courts to designate an inquiry before a grand jury." Hale v. Henkel, 201 U.S. 43, 66 (1906).

Although the term "action " which is used in the Act, is arguably more technical than the term "proceeding," it can be argued that in light of the purpose of the Act, Congress intended the term "criminal action" to include a grand jury inquiry. An argument could be made that the Act's use of the word "action" instead of the word "proceeding" was not intended to restrict the Act's applicability to a formally-instituted action as opposed to those proceedings which precede the technical initiation of an action. The legislative history of the Act refers to "proceedings" not simply "actions." The purpose of the Act is "to require the appointment of interpreters, who have been in Federal, civil and criminal proceedings under specified conditions." See H.R. Rep. No. 95-1687 95th Cong., 2d Sess., (1978), reprinted in, 1978 U.S. Code Cong. & Ad. News 4652. The emphasis of the Act is "to insure that participants in our Federal courts can meaningfully take part in proceedings by assuring that if the participant does not speak or understand English, he will have access to qualified interpreters." S. Rep. No. 95-569, 95th Cong., 1st Sess. at 2 (1978). It follows that even in a grand jury proceeding there must be competent interpreters; otherwise, meaningful participation of the witness cannot be assured.

The Act provides for certification of interpreters essentially for the purpose of safeguarding due process rights. This purpose would only be served by applying the Act to a grand jury inquiry. A strict construction of the Act so as to exclude the grand jury proceeding from its coverage would jeopardize fundamental rights of a foreign-language-speaking grand jury witness and could very well become the vehicle for perjury traps.

With regard to the second definitional issue, even if a grand jury proceeding can be considered a "criminal action," it must be shown that a grand jury proceeding is "in" a district court. Despite the fact that the grand jury acts independently from the prosecutor and the judge, there is substantial authority holding that the grand jury remains an appendage of the court. *See* Wright & Miller, *Federal Practice & Procedure* § 101 at 199 and cases cited therein. The grand jury is subject to the supervisory power of the courts. *Id*. at 200.

> A grand jury is a part of the machinery of government having for its object the detection and punishment of crime. *It is an adjunct or appendage of the court under whose supervison it is impaneled and it has no existence aside from the court.* It does not become...an independent agency in the judicial system but remains an appendage of the court on which it is attending. The grand jury is regarded as an informing or accusing body rather than a judicial tribunal but its proceeding is said to be generally regarded as judicial in nature (emphasis added).

38 Am. Jur. 2d, *Grand Jury*, §1 (1968). *See also Brown v. United States*, 359 U.S. 41, 49 (1959); *United States v. Calandra*, 414 U.S. 338, 346 fn. 4 (1974) (the grand jury is subject to the court's supervision in several respects); *In re Grand Jury Investigation*, 32 F.R.D. 175 (S.D.N.Y. 1963), *appeal dismissed*, 318 F.2d 533, *cert. denied*, 375 U.S. 802 (1964).

Again, however, other authorities emphasize that the grand jury is an independent entity and not an arm of the court. *See e.g.*, *United States v. Udziella*, 671 F.2d 995, 999 (7th Cir. 1982), *cert. denied*, ____U.S.____, 102 S. Ct. 2964 (1982) (the grand jury is a constitutional fixture belonging neither to the executive nor judicial branch); *United States v. Chanen*, 549 F.2d 1306 (9th Cir. 1977), *cert. denied*, 434 U.S. 825 (1978) (under the constitutional scheme, the grand jury is not and should not be captive to any of the three branches of government). *See also U.S. v. Sells Engineering, Inc*., ____U.S.____, 103 S. Ct. 3133, 3141 (1983) (the purpose of the grand jury requires that it remain free within constitutional and statutory limits to operate independently of either prosecuting attorney or judge), *citing Stirone v. United States*, 361 U.S. 212, 218 (1961).

As can be seen, the case law does not provide a clear answer to the question of whether a grand jury proceeding is deemed to be a criminal action "in" a district court and therefore subject to the provisions of the Act. However, in view of the remedial nature of the Act and the important constitutional rights it was designed to protect, it would seem that the Act must necessarily apply to grand jury proceedings in order to protect the due process rights of every grand jury witness. It would be incongruous, to say the least, for a court to conclude that the Act -- which is intended to ensure the rights of the accused to a competent translation -- applies to trials alone, and not to grand jury proceedings where, as a matter of constitutional law, the underpinnings of a criminal indictment must be established.

VI

LEGISLATIVE HISTORY AND INTENT OF THE ACT

Following the Negron decision, the 93rd Congress began addressing the issue of court interpreters. The Bilingual Courts Acts (S. 1724 and S. 565) were introduced and passed by the Senate in the 93rd and 94th Congress. These bills were the precursor legislation to the Court Interpreters Act which was subsequently passed in 1978, after a series of hearings held by subcommittees of the Judiciary Committees of both the House of Representatives and Senate.

As with the Bilingual Courts bills, the emphasis of the Act is to ensure that all individuals in our federal courts can meaningfully participate by assuring that qualified interpreters will be available. S. Rep. No. 95-569, 95th Cong., 1st Sess., at 1 (1977). Congress sought to achieve this guarantee through the Act's key provision which requires that the Administrative Office initiate a certification program for court interpreters. H.R. Rep. No. 95-1687, supra, in 1978 U.S. Code Cong. & Ad. News at 4655.

It was recognized by Congress that a uniform certification procedure was necessitated by the fact that there existed no reliable method of evaluating the accuracy of the translations rendered in the courts and the competence of interpreters assisting criminal defendants in the proceedings against them. Mr. Stafford Richie, Special Assistant General Counsel for the Administrative Office articulated this concern when he testified: "[N]obody knows how accurate the interpretation may have been except the interpreter. And he is the wrong person to look to for an impartial assessment of his performance." H.R. Rep. No. 95-1687, supra, in 1978 U.S. Code Cong. & Ad. News at 4655.

Concern was also expressed by Ms. Paulette Harary, President of the Court Interpreters Association of New York who testified that "the present system of selecting interpreters often involves the expedient acceptance of individuals based solely on their own representation of competence in a particular foreign language." Id.

The inherent inability to evaluate and govern the appointment and competence of court interpreters was viewed as a denial of due process and fairness to non-English-speaking persons. Indeed, Representative Richmond, the sponsor of the bill reminded his colleagues that:

> The Constitution guarantees every American access to the Federal Courts through the fifth and sixth amendments. If language-handicapped Americans are not given the constitutionally-established access to understand and participate in their own defense, then we have failed to carry out a fundamental American promise: fairness and due process for all.

124 Cong. Rec. H34880 (daily ed. Oct. 10, 1978). Speaking in favor of passage of the Act, Representative Edwards urged his colleagues to vote for the Act "so that due process will finally become a reality, in Federal district courts, for individuals with language barriers or hearing impairments." Id. at 34874.

Deploring the then-existing system regarding court interpreting services and citing the decisions in Negron, Carrion and Navarro, Representative Richmond remarked:

> These are only a few of the cases which indicate the need for Federal legislation to set mandatory standards for the appointment of professional interpreters in our Federal courts.
>
> I believe that this legislation will encourage State legislatures to enact similar legislation for the State and local courts where a considerable number of flagrant miscarriages of justice have occurred due to poorly qualified interpreters being used or no interpreters at all.

Id. at 34880.

To prevent the perpetuation of the existing problems in the quality of court interpreters, the Act provides for the mandatory appointment of a certified interpreter where one is "reasonably available." H.R. Rep. No. 95-1687, supra, in 1978 U.S. Code Cong. & Ad. News at 4655. The consensus in both the Senate and House was that, in order to assure fair and efficient court proceedings, it was critical that interpreters used in federal courts be "of the highest quality." S. Rep. No. 95-569 at 6.

Considering the right to a qualified interpreter to be "so basic" to the assurance of due process, Congress determined that the appointment of such an interpreter should be part of the services offered to individuals as a cost of maintenance of the courts, and not a cost of litigation. Id. at 8.

Thus, the obvious Congressional intent underlying the passage of the Act was to create a statutory right to an interpreter and to establish formal procedures and a system that would safeguard the constitutional rights of defendants who cannot speak or understand English, by assuring that only certified, qualified and competent interpreters be appointed in court proceedings. Because it was believed that implementation of the certification process would remedy the evils that led to its enactment, no provision was made for the recordation (by recorder or videotape) of their testimony. Such recordation was deemed too costly and Congress feared that it would generate endless appeals based on the interpretation. "It is felt that by the establishment of a program to make available certified, qualified interpreters to all litigants, the government has provided all the safeguards to a true and valid interpretation that can reasonably be expected." Id.

VII

VIOLATION OF THE ACT AND DENIAL OF DUE PROCESS

It is clear that the Government has failed to follow the mandated requirements of the Act in this case. Despite the fact that Japanese is among the most common languages for which interpretive services are required, the Government did not establish a court interpreters certification program for Japenese language interpreters, and thus it could not furnish to the grand jury a "certified" Japanese interpreter. Moreover, the Government did not select an "otherwise" competent interpreter, thereby violating Kamiyama's due process rights. Having failed to supply an interpreter who could competently translate for Kamiyama the questions posed to him and his responses to those erroneously translated questions, the Government should be precluded from obtaining any conviction based upon an incompetent translation.

As set forth above, to ensure that the constitutional rights of the non-English-speaking defendant are protected, the Act requires that the Director of the Administrative Office:

(a) "shall establish a program . . ."

(b) "shall prescribe, determine and certify the qualifications of persons who may serve as certified interpreters . . ." (emphasis added) 28 U.S.C. § 1827.

The plain and imperative language of the Act manifests a legislative intent to make it mandatory for the Director of the Administrative Office to establish a program to certify interpreters used in United States courts in bilingual proceedings.

The Act's use of the word "shall" evinces that mandatory intent. Courts have held that the word "shall" may render a particular provision mandatory in character. McCarthy v. Coos Head Timber Co., 208 Or. 371, 302 P.2d 238 (1956); Atlantic Greyhound Corp. v. Public Service Com., 132 W. Va. 650, 54 S.E.2d 169 (1949). Use of the word "shall" generally indicates a mandatory intent unless a convincing argument to the contrary is made. Sierra Club v. Train, 557 F.2d 485 (5th Cir. 1977). Furthermore, it has been held that provisions which relate to the essence of the thing to be done, that is, to matters of substance, are mandatory. Christgau v. Fine, 223 Minn. 452, 27 N.W.2d 193 (1947).

In view of the specific language and legislative history of the Act, as well as the judicial history leading to its enactment, it is beyond question that the cardinal purpose of the Act was to establish a certification program for court interpreters to ensure that only qualified interpreters be used in the United States courts so that non-English-speaking defendants be accorded their constitutional rights to due process.

To ensure the quality of those interpreting services, the Act established a national certification program, the Federal Certification Examination, administered through the Administrative Office. The Act addressed the question of interpreter competency by directing the Director of the Administrative Office to:

> ...prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters in courts of the United States in bilingual proceedings and proceedings involving the hearing impaired

> (whether or not also speech impaired), and in so doing, the Director shall consider the education, training and experience of those persons (emphasis added).

At present, however, the only existing certification program is for the Spanish language and therefore only Spanish language interpreters have been certified under the Act. Thus, although the Japanese language was specifically mentioned during the debates in the House of Representatives as one of the languages for which interpreters were required [124 Cong. Rec. H34880 (1978)], no certification program for Japanese interpreters has been established by the Director of the Administrative Office. This delay is difficult to understand in view of the relative speed with which the Director of the Administrative Office moved to certify Spanish interpreters. As indicated in Seltzer v. Foley, 502 F. Supp. 600, 604-07 (S.D.N.Y. 1980), after the Act was passed, the Spanish certification test was administered in approximately one year; the criteria for certification were established in a two-week conference and the test drafted and offered within three months thereafter.

The Government's failure to implement a Federal Certification Examination for languages other than Spanish (the "exotic" languages) makes it necessary for federal judges to resort to the deficient system which predated the Act. More specifically, the lack of certified interpreters of the exotic languages (e.g., Japanese) forces judges to depend on unreliable and sometimes biased sources to obtain interpreters for the non-English-speaking defendants before them. Some judges must adjust their calendars to the availability of the uncertified interpreters. See B. Lee, Court Interpreting Services at 26 (Final Draft, August 1984, unpublished). Others enlist the help of a deputy clerk, a secretary, a relative, a spectator or anyone else who happens to be around, or even proceed without an interpreter. See Dr. Carlos Astiz, "Language Barriers in the Criminal Justice System: A Look at the Federal Judiciary," Conference on Law Enforcement and Criminal Justice July 28-30, 1980 (Washington, D.C., Department of Justice. 1980), at 333-357, cited in B. Lee, supra. Clearly, such system is riddled with the evils which the Court Interpreters Act sought to eradicate by giving linguistic minorities access to the constitutional rights imperiled by the failure to appoint a competent interpreter.

Here, the Government's failure to implement a certification program for Japanese language interpreters resulted in the appointment of an interpreter incompetent to translate the proceedings before the grand jury. The practical effect of denying Kamiyama a competent interpreter was to render the translation of his grand jury testimony fatally flawed and thus contravened his due process rights as guaranteed by the Fifth Amendment.

The failure to certify Japanese interpreters placed upon the Government a heavy burden of showing that an "otherwise competent" interpreter had been appointed. No showing has been made that the Government took any steps to ensure that Kamiyama's grand jury interpreter was competent; indeed, no attempt was made to secure the services of a second interpreter despite the obvious difficulties the appointed interpreter, John T. Mochizuki, was having before the grand jury. This failure to provide Kamiyama with an "otherwise competent interpreter" so as to satisfy the Act and the constitutional imperatives set forth by Negron and its progeny renders his perjury conviction constitutionally infirm. Indeed, the experience in certifying Spanish interpreters gives every indication that interpreters selected under the old system (as was Mochizuki) are likely to be incompetent. This conclusion is easily supported by the incredible fact that more than three-fourths of those who had been employed as Spanish interpreters before the certification process was begun failed to achieve certification. *See* Arjona, *Language Planning*, *supra*, at 3.

Furthermore, the Act's provision that the services of an "otherwise competent interpreter" be used where no certified interpreter is reasonably available, must be read in light of the congressional intent to assure the highest caliber of interpreting services in federal courts. "Otherwise" must be construed in conjunction with the qualification requirements of subsection (b) of the Act which mandates, *inter alia*, that the Director consider the education, training and experience of interpreters seeking certification. An "otherwise" competent interpreter under subsection (d) of the Act can only mean that the substitute interpreter should, at a minimum, be *in other respects* or *in other ways* as competent as the unavailable certified interpreter. To hold otherwise would lead to the absurd result that non-English-speaking defendants who happen to be brought to court on a day when no certified interpreter is available, would end up with an interpreter who does not meet the federally-established standards of competency. Due process rights would thus be dealt on a luck-of-the-draw basis. Certainly, this could not have been the intent of Congress when it passed the Court Interpreters Act after years of public and judicial concern over the constitutional treatment of foreign-language-speaking defendants.

Mochizuki, the appointed interpreter in this case, did not satisfy the "otherwise competent" standard of the Act. Whether an assessment is based on his extrinsic qualifications or on internal evidence consisting of the adequacy of his translation before the grand jury, it is clear that Mochizuki was not "otherwise competent" to interpret court proceedings. The expert witnesses who have examined his performance in this case have found it "sub-standard and non-professional" for judicial purposes. Kaiser Declaration _ 7, at 13. Although

Mochizuki is a native speaker of Japanese, as the proceedings before the grand jury make plain he has difficulty expressing himself in English. On many occasions Mochizuki selected the wrong word to convey a particular idea to the extreme prejudice of Kamiyama, reflecting the fact that he "did not control the respective vocabularies of the two languages well enough to convey nuances accurately." Hinds Declaration _ 28. Mochizuki's incompetence as a court interpreter is made self-evident by his inability to translate in either language such basic legal terms as "perjury," the "Fifth Amendment" and "swear" for the recitation of the oath.

Indeed, from a purely objective point of view. Mochizuki's education, training and experience failed to satisfy the standard required by the Act. Although certified as an interpreter by the State Department, his certification was only at the "escort" level, not the "conference" level required for formal proceedings. Kaiser Declaration _ 6. The State Department utilizes escort interpreters only to accompany foreign individuals and delegations traveling around the United States and interpret for them in informal situations. They are never expected nor called upon to render interpreting services in official and technical settings, and they are frequently used by travel agencies that organize tours for foreign groups and business concerns. Such "escort" certification stands far from qualifying Mochizuki as an interpreter in American court proceedings. In the absence of an available federally-certified interpreter under the Court Interpreters Act, the presiding judicial officer was required to appoint an alternate interpreter who, looking at his education, experience and training, was in other ways as competent, i.e., a certified conference-level interpreter. S. Rep. No. 95-569, supra, at 6-7. By violating both the language and the spirit of the Act, the Government deprived Kamiyama of his constitutionally-grounded rights as established by Negron.

Had a certified Japanese interpreter been used in the grand jury proceeding, an accurate and competent translation of Kamiyama's testimony could have been made and, only then, if appropriate, a valid indictment returned. A certified Japanese interpreter was not available because the Government has failed to institute the certification program mandated by the Act and apparently took no steps to ensure that an "otherwise competent" interpreter was provided. This situation was permitted, despite the fact that most experts in the field, judges, lawyers and litigants view the Court Interpreters Act, and the federal certification program which it mandates, as the vehicle for ensuring that only qualified interpreters are used in the federal courts, so that the due process rights of language minority defendants will be protected. See B. Lee, supra, at 28; Arjona, supra, at 4. And yet, the Government has not given a reasonable explanation of why the mandatory requirements of the Act have not been complied with over the past five years or how Mochizuki was selected to translate Kamiyama's grand jury testimony.

Because of the relative newness of the Act and the unique character of this case, we have found no cases where the court considered whether the failure to follow the Act constituted a denial of due process. However, it is clear that courts are required to closely follow the specific requirements of the Act. See United States v. Tapia, 631 F.2d 1207 (5th Cir. 1980) (Court of Appeals remanded the case to the trial court for failure to make the findings required by the Act.) Furthermore, there are many analogous cases in which the courts have reversed convictions or found a denial of due process because the Government violated statutory requirements.

For example, in Benanti v. United States, 355 U.S. 96 (1957), a defendant's conviction was reversed because the prosecutor continued to use evidence linked to an illegal wiretap in violation of the Federal Communications Act (47

U.S.C. § 605), which provided that no person not authorized by the sender shall intercept a communication and divulge or publish the existence or contents thereof to any person.

Similarly, in Bridges v. Nixon, 326 U.S. 135 (1945), the Supreme Court held invalid a deportation order based upon statements which did not comply with the rules of the Immigration and Naturalization Service requiring signatures and oaths. The court found that the rules were designed "to afford [the alien] due process of law" by providing "safeguards against essentially unfair procedures." Id. at 152-158.

The judicial precedents which led to the enactment of the Court Interpreters Act unequivocally and firmly established a defendant's right to an interpreter when needed to enable him to understand the proceedings. This is especially so where the translation itself forms the basis of a perjury indictment. In those circumstances, we submit, the Government is under a most rigorous duty to ensure that not only the translation but also the interpreter, is of the highest caliber. Without such heightened standards, any perjury conviction is inherently suspect, and, as Kamiyama's motion papers reveal, can lead to a grave miscarriage of justice.

Indeed, how can a foreign-language-speaking defendant's right to understand the bases of the proceedings against him be protected if the Government fails to provide the means to comprehend what is being asked of him? This is essentially the question which the Senate asked itself when it passed the Act. S. Rep. No. 95-569, supra, at 3. See, e.g., Cannis; see generally, Point III, supra. Similarly, a defendant's right to effective counsel, as established by Gideon v. Wainright, 372 U.S. 335 (1963) and Powell v. Alabama, 287 U.S. 45 (1932), is meaningless to an English-handicapped defendant since without a complete and accurate interpretation of the proceedings for the defendant and interpreted communication between client and attorney, counsel is rendered incompetent or ineffective. See, e.g., Negron; Vasquez; see generally, Point III, supra.

As with the right of confrontation and the right to effective counsel, it is clear that the right to an interpreter is of no use to a non-English-speaking defendant if such right is not construed to entitle him to an effective, competent interpreter. Thus, it has been held that it was reversible error to conduct a trial where the Spanish interpreters were unable to effectively interpret for the defendant who was a West Indian. Kelly v. State, 96 Fla. 348, 118 So. 501 (1928).

Similarly, in State v. Deslovers, 40 R.I. 89, 100 A. 64 (1917), the defendant's conviction was reversed where the record showed that the court-appointed interpreter was incompetent and unable to discharge his duties. The court held that failure to remove this interpreter and appoint a competent one was prejudicial to the accused, and denied him a fair and impartial trial to which he was entitled under the law. See also, People v. Starling, 21 Ill. App. 3d 217, 315 N.E.2d 163 (1974) (quality of interpretation may determine whether defendant understood testimony against him to satisfy constitutional requirement); Hudson v. Augustine's, Inc., 72 Ill. App.2d 225, 218 N.E.2d 510 (1966) (interpreter who was not formally trained to interpret for the deaf did not satisfy statutory requirement of competency).

In the setting of a criminal proceeding, the denial of due process has been defined as:

> ...the failure to observe that fundamental fairness essential to the very concept of justice. In order to declare a denial of it we must find that the absence of that fairness fatally infected the trial; the act complained of must be of such quality as necessarily prevents a fair trial.

Lisenba v. California, 314 U.S. 219, 236 (1941); see Donelly v. DeChristoforo, 416 U.S. 637, 643 (1974); Ham v. South Carolina, 409 U.S. 524, 526-27 (1973), cited in A. Cronhein & A.

Schwartz, "Non-English-Speaking Persons in the Criminal Justice System: Current State of the Law", 61 Cornell L. Rev. 289, 296 (1976).

By imposing a stringent certification program on interpreters, Congress purposely raised the standard of competency which is deemed constitutionally acceptable in our federal courts. Such standard cannot be lowered on the convenient pretext that there are no "reasonably available" certified interpreters in this case, since the Government has not yet established a procedure to certify Japanese-language interpreters. See S. Rep. No. 95-569 at 12 (in that situation, the responsibility falls upon the presiding judicial officer to insure the competency of the uncertified interpreter). To the contrary, the fact that there is no Federal Certification Examination for the Japanese language tends to support the argument that there exist "otherwise" competent Japanese interpreters who have not yet been able to attain certification because of the Government's failure to implement the necessary and statutorily-required program. The Government, in appointing Mochizuki, blatantly disregarded Congress' intent as evidenced by the requirements of the Act. The Government's failure to comply with the Act deprived Kamiyama of his fundamental right to a fair trial and denied him the due process guaranteed by the Fifth Amendment of the Constitution.

VIII

CONCLUSION

Given the unique character of this case in which the Government, for the first time, sought and obtained a perjury conviction on the basis of the translated version of a Japanese individual's testimony, the Government should be held to the strict standards imposed by the Court Interpreters Act and the judicial precedents relating to the constitutional right to a competent interpreter. To do otherwise would result in a grave miscarriage of justice and the abridgement of Mr. Kamiyama's fundamental right to due process as guaranteed by the Fifth Amendment of the Constitution.

ADDITIONAL STATEMENTS

TESTIMONY OF RICHARD GRAVELEY

NATIONAL DIRECTOR OF PUBLIC AFFAIRS
INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS
Submitted to
THE COMMITTEE ON THE JUDICIARY
of the
UNITED STATES SENATE
SUBCOMMITTEE ON THE CONSTITUTION

It is an honor to submit testimony to this distinguished committee regarding "Government Intervention into Religious Affairs."

The International Society for Krishna Consciousness (ISKCON) which I represent, was established in 1966 by His Divine Grace A. C. Bhaktivedanta Swami Srila Prabhupada. He hails from an orthodox line of Hindu Vaishnavism dating back approximately 5000 years to the appearance of Lord Krishna. The practices and beliefs of this ancient and monotheistic religion embody tenets of Sanskrit scriptures such as Bhagavad-gita and Srimad Bhagavatam. Srila Prabhupada's English renderings of these texts have brought new meaning and purpose in life to thousands of Westerners. These books, now translated in over 30 languages, form the basis of what is popularly known as the "Hare Krishna Movement."

ISKCON has sixty-five temples and farm communities in America and nearly two-hundred missionary centers in seventy countries worldwide. In the last decade alone, ISKCON Food Relief distributed some fifty million plates of free food to needy people worldwide. In America, ISKCON assists the needy with eighteen free food distribution and temporary housing centers.

Leading international theologists, philosophers and indologists praise ISKCON's sound scriptural foundation and its humanitarian effort. Yet some label ISKCON a destructive cult. Consequently, ISKCON members sometimes suffer vicious phenomena unique in American history. This phenomema threatens the safety and well-being of all free thinking God conscious Americans. It is religious deconversion (deprogramming), a coercive act imposed upon members of many religions, both "new" and "established." Victims endure intensive persecution, false imprisonment, and physical, mental and sexual abuse. Deprogrammers have been supported by the courts in many states although their acts are blatantly unconstitutional. Futher, the FBI has generally failed to track down these Constitutional offenders.

This testimony will first bring to light the illegality of "deprogramming" and then outline steps to prevent it. We will focus on these specific topics:

1. Deprogramming: What is it?
2. The use of court ordered conservatorships.
3. Special investigations of new religions.
4. Department of Justice: The FBI's "hands off" policy.
5. Ex-members filing suit against their religious. organizations.
6. The tax exempt status of deprogramming organizations.

WHAT IS "DEPROGRAMMING" ?

Religious persecution is nothing new. History shows how St. Francis of Assissi, St. Thomas of Aquinas, and countless others were restrained and pressured to change their religious convictions.[1] Today, religious persecution has taken the form of a highly organized nationwide effort to restrict targeted individuals from maintaining freely chosen religious beliefs.

"Deprogramming" is a term coined by Ted Patrick (Black Lightning), a man who has been convicted, jailed and sued for his forcibly kidnapping and assaulting religious victims. It is an attempt to remove an individual from his or her involvement in a religious group and convince them to renounce their adherence to that faith or belief. Patrick claims to have been involved in over 1600 deprogrammings himself. The exact figure of attempted deprogrammings is hard to calculate because practitioners are reluctant to advertise. However, experts in the field estimate that since 1976 between 2,500 to 3,000 American citizens have been subjected.[2]

"Deprogramming" has three basic stages. First is the abduction of the individual, by force and deception. In this stage the kidnapped victim is often bound, gagged, and transported across state lines to a location specifically designed to facilitate intensive interrogation. During the second phase, the victim is often confined and subjected to physical and sexual abuse, belligerent criticism of his or her religion, sleep and food deprivation, and other calculated tortures. "Deprogrammers" aim to break the victim's faith in his religious belief. Phase two generally continues for a period of five to ten days. By that time, the victim generally submits to his captors, either to stop the torture, or because his faith is actually shattered.

The third phase is "rehabilitation." The victim is transported to a rehabilitation center in another part of the country. (Presently, known rehab centers are located in Arizona, Iowa, Minnesota, Ohio, Pennsylvania and New Jersey.) There the victim remains confined for approximately one month, a period meant to "readjust" him to the "real" world.

According to Sociologist Anson Shupe, three types of persons engage in deprogramming attempts.[3] The largest category is the parents and relatives of the victim. They pay between $10,000 and $20,000, plus expenses, regardless of whether the deconversion was successful or not.

Former members make up the second category. These persons become enemical toward their former churches having been converted to the "deprogrammings" cause.

The third category consists of "sympathetic sideliners" such as psychiatrists, physicians, social workers and journalists. This small but vocal group "lends scientific credance to claims of brainwashing and 'psychological enslavement', reinforcing the suspicions and fears of families. Such scientific legitimacy is an important component of the deprogramming rationale." It is this group that has developed a rationale for destroying the victim's individual rights and liberties.[4]

Organizations such as the American Family Foundation and Citizens Freedom Foundation would have us believe that kidnapping and confinement have been replaced by milder forms of deprogramming called 'exit counciling'. However, little has changed. Just two months ago, a member of the Hare Krishna Movement was dragged into a van by hired thugs and taken halfway across the country. He underwent an eight day deprogramming session, then was transported to a rehab center in Ceder Rapids, Iowa. He was finally rescued by the city attorney and members of the ACLU. Gentlemen, this act of violence orginated within two blocks of the Capitol building.

Such actions clearly infringe upon one's constitutional rights. Steps must be taken to preserve those rights. Included in the common "deprogramming" are the illegal acts of false imprisonment, kidnapping, transportation across state lines, assault, rape and civil rights violations.

Section 1985(c) of the Civil Rights Act states:

> Two or more people cannot act on an agreement to deprive any person or class of persons equal protection of the laws, or of equal privileges and immunities under the laws; nor can they injure another in person or property, or deprive him of having and exercising any right or privilege of a citizen.[5]

This section protects individuals from conspiracies intended to deprive them of equal protection by the law. Therefore, not only has the "deprogrammed" individual been deprived of his First Amendment Rights to exercise religious freedom; he has also been deprived of his rights under the Fourteenth Amendment.

ABUSE OF CONSERVATORSHIPS

In an effort to remove adult children from religious organizations, parents have turned to the use of court ordered conservatorships. As ACLU attorney Jeremiah S. Gutman points out,

> A typical state structure will provide for appointment of a conservator or guardian of the property of someone who has lost the capacity to manage his or her own affairs. This type of arrangement is most often invoked with geriatric patients.[6]

In nearly a dozen states conservatorship laws have been introduced by anti-religious lobbies that is intended for use in "deprogrammings." In essence the conservatorship allows the parents to have permission of the court to forcibly withdraw their adult child from his chosen religion and subject him to a "deprogramming." In the past conservatorships have been issued without the judge interviewing the individual to see if such action is warranted, and decisions have been based solely on testimony by the parents and their accomplices.

Bills like the one recently introduced in the New Jersey Senate (S. 488) would give a parent or guardian the right to take possession of the child should he exhibit the following changes:

> 1. Abrupt and drastic alterations of basic values and lifestyle
> 2. Blunted emotional responses
> 3. Regression to child-like levels of behavior
> 4. Physical changes such as drastic weight loss
> 5. Reduction in decision making abilities
> 6. Dissociation, obsessional ruminations, delusional thinking, hallucinations or other psychiatric symptoms.
>
> It also warrants action if the individual has been subjected to any of the following methods of coercion:
>
> 1. Manipulation and control of the environment
> 2. Isolation from family and friends
> 3. Control over information and channels of communication
> 4. Physical debilitation through sleep deprivation, unreasonably long hours or inadequate medical care
> 5. Reduction in decision-making ability through the performing of repetitious tasks, repetitive chants, sayings or teachings. . .[7]

Gentlemen, I admit that I was victim of such abrupt changes and coercion: it happened in 1971 when I joined the U.S. Army to defend and protect our country and Constitution. Fortunately for the country's security, my parents and others didn't think of using conservatorships to remove their son from the armed forces. And, I certainly have no regrets about having served America. Conservatorship laws would make it possible for parents to remove their child from the military based on the changes the individual underwent after joining.

Of course, the intent of such vague legislation is not to stop a soldier from serving the country, but it is intended to stop a religious convert from practising his religion. To quote Gutman, these bills "seek to base imposition of Draconian restrictions of liberty upon standards both vague and elusive."[8] Thus far no state has passed such legislation. However, in New York a conservatorship bill did pass both houses only to be vetoed twice by Governor Hugh L. Carey.

In the case of Katz v. Superior Court the decision of appellate court was that conservatorship orders could not be applied to religious beliefs and fortunately clarified the issue in California.

> The court explained why the conservatorships were unconstitutional by emphasizing that the superior court had overstepped its bounds when it imposed its judgment of the merits of the converts' religious convictions.
>
> Because the courts may not inquire into the wisdom of theological tenets, a conservatorship order, which requires a determination of mental competence, may not be based on an inquiry into the substance of an adult's religious belief. Sanity or incompetence cannot, under the Constitution, be established by proof that one's religious faith is absurd. (Note, 53, N.Y.U. L. Rev., 1978:1269)[9]

What is beginning to emerge in society is the concept of parens patrice, the notion that the king as father of the country has the power to act on behalf of the disabled people under his sovereignty. But, does changing from a Catholic to a Mormon make me a disabled person? Courts have generally held that unless a clear and present danger exists to society then the state cannot infringe upon the individual's right to practice his religion. Yet it is all to easy to find a sympathetic judge to issue a conservatorship order.

We suggest that legislation be introduced to prohibit the use of conservatorships on persons who have taken up a new religious practice. It is quite ironic that, on one hand, the government recognizes a religious organization as valid and awards it a tax-exempt status based on its practices. If, however, an individual chooses to take up those religious practices, the same government may sanction his "deprogramming" and confinement. Certainly legislative action can be taken to safeguard the use of government intrusion in religious affairs. The very least a government could do is to use the measure of its own acceptance of a religious organization's tax status to restrict the use of conservatorship. Our government is not repressive; therefore the criminal misuse of conservatorships for "deprogramming" should be eliminated.

SPECIAL INVESTIGATIONS OF NEW RELIGIONS

Relgious organizations have increasingly become victims of IRS investigations. Tremendous hardship and strain on the organization's time, energy and resources have produced in most cases, a clean bill of health. There are abuses of the 501C3 tax status and, fortunately, the Church Audit Procedures Act is a measure that works to protect the sanctity of the church body while providing a framework for the IRS to conduct its investigations. The question to keep in mind is, what prompts the IRS to investigate?

Currently, if the IRS receives complaints of 501C3 abuses this may substantiate an investigation of the respective religious organizations. Investigation demonstrates a widespread concern that the causes for investigation should be more clearly defined. For example, it is reasonable to assume that anti-religious organizations could systematically conspire to cast doubt on a particular religious group. They complain to the IRS, which in turn prompts an investigation at the taxpayer's expense, thus causing undue harrassment to the religious body and a great expense to the public. We suggest that steps be taken to safeguard religious organizations from such scenarios. For example, more descriptive guidelines for the IRS could be required to first investigate the credibility of the source of complaint. This would expose possible conspiraicies against particular religious bodies. Documented evidence clearly shows such conspiracies do exist, and they are the concern not only of minority religions but of major religious bodies as well.

Another form of government intervention in religious affairs was introduced in the Nebraska Legislation. The legislation proposes to investigate "cult" activity in Nebraska. What is a religion and what is a cult? Does a cult become a religion, and if so, when? Religious scholars know that, in its infancy, Christianity bore the markings of current day cult definitions. Clearly, the pejorative wording of the resolution clearly demonstrates a lack of the objective analysis needed to produce an accurate report.

The International Society for Krishna Consciousness (ISKCON) certainly has no objection to an objective investigation and analysis of its religious practices and encourages such investigations when conducted by qualified scholars. One such investigation was done by the Government of Denmark, a project which took considerable time and funding. Its reports were quite accurate in assessing the nature of ISKCON. In conclusion the report reads as follows:

> In our investigation Hare Krishna has taken a cooperative attitude, albeit that it has formulated objections against being qualified as a new religious movement and against being placed consequently in the category of movements under investigation. We have tried to demonstrate that the movement has deep historical roots in the Hinduistic tradition, it is true, but that given its aims and method it cannot be seen in an otherwise, especially in the West, than as a new religious movement. Religiously we consider it undisputed. Moreover, because of its theistic character we think that it falls within the boundaries of the term

> "religious denomination", as formunlated by Duynstee, so that we find its idea - in order to choose its proper legal status - to manifest its wish to count as a religious denomination, justified.
>
> The openness that the movement has shown to us has enabled us to build up for ourselves a clear image of Hare Krishna. If this image has not increased our Krishna-consciousness, it has at least increased our consciousness of the movement which is called by that divine name.[10]

Not all religious organizations take an open stance and rightly so. Many people question the government's qualification to judge the ethics of a religious body. They are also justified. Our forefathers themselves established protection of religion from government intrusion.

If investigations of religious bodies are to go on, and I am sure they will, then we may suggest that certain standards be applied to avoid undue persecution.

William C. Shephard has observed that certain guidelines were used in two major cases regarding religious freedoms. The measure of judgement applied in these cases, Sherbert v. Verner 374 U.S. 398 (1963) and Wisconsin v. Yoder, (406 U.S. 205 (1972) have been combined to "institutionalize a balancing test designed to accord the free exercise clause substantially greater weight than before." The questions which the courts used to measures the claims of the religious bodies were as follows:

> 1. Are the religious beliefs in question sincerely held?
> 2. Are the practices under review germane to the religious belief system?
> 3. Would carrying out the state's wishes constitute a substantial infringement on the religious practice?
> 4. Is the interest of the state compelling? Does the religious practices perpetrate some grave abuse of a statutory prohibition or obligation?
> 5. Are there alternative means of regulation by which the state's interest is served but the free exercise of religion less burdened?[11]

This test, of course, is subject to man's imperfections, but is nonetheless objective. Incidentally, it was also applied to the Katz case. By the use of this test, the court concluded that the use of a conservatorship was clearly not the appropriate action for the State to take. To protect First Amendment rights, we would suggest that the measure used in the Sherbert and Yoder case be established as guidelines for investigaions of religious organizations.

HANDS OFF POLICY OF THE DEPT. OF JUSTICE

Under Title 18, section 241:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States or because of his having so exercised the same; or . . .
>
> They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.[12]

This civil rights code was established to protect persons of minority status in America from persecution. It is a good statute. However, it is at best selectively enforced.

U.S. Code title 18, section 1201 states as follows:

> Whoever knowingly transports in interstate or foreign commerce, any person who has been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away and held for ransom or otherwise, except, in the case of a minor, by a parent thereof, shall be punished (1) by death if the kidnapped person has not been liberated unharmed, and if the verdict of the jury shall so recommend, or (2) by imprisonment for any term of years or for life, if the death penalty is not imposed.[13]

As mentioned earlier, the estimated number of deprogrammings is between two and three thousand. And research indicates that the average age of religious kidnapping victims is 23 years old. At the age of 23, a person could have spent five years fighting for his country, voted in two presidential elections, produced two children and be preparing to run for Congress in two years, yet is still an open target for "deprogramming." Why? One reason is that investigations show a lack of law enforcement on the part of the FBI.

Although the laws are clear, the FBI has chosen not to become involved in parent originated "deprogrammings" because of their domestic nature. As stated by Philip B. Heymann, Asst. Atttorney General,

> I would also like to point out that it is a general policy of the Department of Justice not to become involved in situations which are essentially domestic relations controversies. If a parent abducts his adult child from a religious sect, accomanies the child thoughout the so called "deprogramming" and there is no violence or other aggravating circumstances, these facts would weigh against Federal involvement.[14]

One example I know of involved a twenty-five year old college graduate who joined the Hare Krishna movement only to be kidnapped and taken on a bizarre odyssey of imprisonment, assault and rape. Even though witnesses reported her violent abduction to the police and the FBI was contacted, the statement of the agent in Baltimore was as follows: "If my son or daughter were in the Hare Krishna movement I would have them deprogrammed too."[15] So far, no action has been made by the FBI to bring justice to the guilty persons. Of the several thousand deprogrammings that have occurred only a small handful of deprogrammers have faced criminal charges for their action. State child abuse and neglect laws exist to protect minors from deranged parents. Are we to understand that parents get a free rein to let others abuse their child once becomes an adult and is involved i a minority religion, because the Justice Dept. does not involve itself in domestic affairs? Mr. E. Ross Buckley, Attorney in Charge, Freedom of Information Unit of the Dept. of Justice, states,

> The General Crimes Section has no procedures, policies, rules, or guidelines which specifically deal with "deprogramming" or anticult activities.[16]

We would recommend that amendments be made to existing kidnapping and civil rights codes that would compel federal agencies to enforce laws concerning kidnapping even though it may be a domestic concern. Perhaps this would encourage parents to approach their adult son or daughter's acquired religion with tolerance and understanding rather than treating their children as the Communist party's treats Soviet dissidents. I suggest this honorable committee compare the material submitted to the House

Foreign Affairs Committee o· September 30, 1983 regarding The Political Abuse of Psychiatry in the USSR and the material on deprogramming. You will see a striking similarity in the rhetorical treatment of the KGB toward dissidents and the anti-cultists toward Krishnas, Moonies, Scientologists and other members of minority religions. Our organization is aware of the similarities, since Hare Krishna devotees in Russia are presently undergoing the same tortures placed upon Soviet political enemies.

If on one hand we guarantee religious freedom yet we do not enforce it, then the Bill of Rights becomes subject to futher abuse and exploitation.

EX-MEMBERS OF RELIGIOUS GROUPS FILING SUIT AGAINST THEIR FORMER AFFILIATIONS

After a person undergoes a deprogramming he may decide to divorce himself from his new religion. Dr. Garden's studies show that oftentimes persons in this category were planning to leave the organization anyway, and use the deprogramming as a convenient excuse for separation.[17] Aside from the reasons for leaving, ex-members then undergo a barrage of solicitation by anti-cult lawyers who have encouraged them to establish a case against their disassociated religious organization. Suits are filed on the grounds that the ex-member underwent false imprisonment, fraud, or emotional distress. Documented evidence shows that such actions are part of a conspiracy by anti-cult groups to cripple religious organizations' finances through legal battles.[18] These cases cause religious organizations the burden of putting their practices on the witness stand. Based on the comprehension of the court it is determined whether a religious practice is valid or not. Here again we have a situation of the courts determining what is religion. In our faith tradition it is the infallible Lord who determines what constitutes religion. This is quite clearly described in the 5,000 year old Vedic teachings. It is not discounted that a judge could ascertain whether the practice of a religious organization is bonafide, but his judgement should be based on whether that religious organization follows the religious scriptures that it claims to follow. This, coupled with the Sherbert-Yoder test mentioned earlier, would help to insure that court rooms do not become the battleground for religious bigotry.

TAX EXEMPT STATUS OF ANTI-RELIGIOUS ORGANIZATIONS

Earlier, we argued for the protection of religious organizations from subjective IRS investigation. Granting tax exempt status to anti-religious organizations which oppose First Amendment Rights appears inconsistent from our point of view.

As you may know, anti-religious organizations have sprung up in this country whose activities range from informational agencies to active "deprogramming" institutions. They have been granted tax exempt status by the federal government. Funds are used to promote deprogramming and disinformation about new religions in America. Leaders of anti-religious organizations like the Citizen's Freedom Foundation (CFF) have been convicted on charges of "deprogramming" and false imprisonment. These organizations feel that they have an integral part to play in the education of society as to the dangers of destructive cults. Ironically, members of these organizations are allowed into public schools to cast doubt and fear about the dangers of seeking out God and yet religious groups are not permitted equal access to present their views. Anti-religious organizations claim that cults use mind control, brainwashing and coercion on their members. Yet the same organization promotes illegal kidnapping, false imprisonment and physical and mental torture of adult religionists. Also, having captured the emotional sentiments of misinformed parents, "deprograming" organizations eventually destroy the already fragile parent-child relationship should "deprogramming" attempts fail. Our studies show that in the Krishna Consciousness movement approximately 75% of "deprogramming" attempts are unsuccessful. Far more relationships are thus broken than repaired.

In the interest of protecting religious freedoms, I suggest an investigation into the activities of "deprogramming" organizations; their use of conservatorships and government help in kidnapping adult religionists; and the use of the public schools in promoting "anti-cult" misinformation. Secondly, it should be observed by the committee that if such activities constitute a violation of First Amendment religious liberties, then steps should be taken to withdraw such organizations' government sanctioned tax exempt status. (How can the government protect relgious freedom while promoting the attackers of those freedoms?) This may require new legislation that would better clarify the qualification of organizations deserving the tax exempt status with the federal government.

CONCLUSION

We have discussed the issue of "deprogramming" as it relates to government intervention into religious affairs with respect to First Amendment rights. As a society we are increasingly more concerned about the rights of women, the rights of ethnic minorities, and even the rights of animals. I ask this committee to become aware of the rights of minority religions and take the necessary steps to investigate and enact legislation needed to insure this sacred Constitutional right. What is restricted from one may soon be restricted from all. I pledge my support and fullest cooperation to your efforts.

ENDNOTES

[1] Dear Kelly, "Deprogramming and Religious Liberty." Civil Liberties Review, (July/August 1977) p.23

[2] Jeremiah S. Gutman, "Cults, Cultist and the First Amendment", from the Frist Amendment Symposium on Religious Liberty, Washington, D.C., 1979

[3] Anson D. Shupe, "Deprogramming the New Exorcism," Conversion Careers: In and Out of the New Religions, ed, James T. Richardson, Beverly Hills/London: Sage Publications, 1978) p. 147

[4] Sharon L. Worthing, "The Use of Legal Process for De-Conversion," *Government Intervention in Religious Affairs*, ed. Dean M. Kelley, (New York: Pilgrim Press, 1982) p. 166

[5] David G. Bromley, "Conservatorships and Deprogramming Lega and Political Prospects," *The Brainwashing, Deprogramming Controversy: Sociological, Psychological, Legal and Historical Perspectives* (New York and Toronto: The Edwin Mellen Press, forthcoming), p. 21

[6] Jeremiah S. Gutman, "Legislative Assault on New Religions," *The Brainwashing/Deprogramming Controversy*, (New York and Toronto: Edwin Mellen Press, forthcoming.)

[7] S. Res. 488, New Jersey Senate, 1982 Sess.

[8] Jeremiah S. Gutman, "Legislative Assault on New Religions," p. 18

[9] William C. Shepherd, "The Prosecutor's Reach: Legal Issues Stemming from the New Religious Movements.", p. 197

[10] Study of New Religious Movements by the Government of Denmark, 1983

[11] William C. Shepherd, "The Prosecutor's Reach: Legal Issues Stemming from the New Religious Movements.", p. 193

[12] U.S. Code Title 18, Section 241

[13] U.S. Code Title 18, Section 1201

[14] Letter from Philip B. Heymann to Adelo Connell regarding "deprogramming", 1-18-79

[15] Conversation with FBI investigator and Micheal Gough, husband of deprogramming victim Kim Gough, (August 1982)

[16] Letter from E. Ross Buckley Attorney in Charge Freedom of Information/Privacy Unit March 14, 1977

[17] J. Gordon Melton and Robert L. Moore, "Deprogramming and the Anti-cult Movement," *The Cult Experience,* (New York: The Pilgrim Press, 1982), p.82

[18] Based on information recieved from the Citizens Freedom Foundation's annual meeting in Washington, D.C. (1982)

TESTIMONY OF

DR. BOB JONES, JR.

ON S. 2568

"THE CIVIL RIGHTS ACT OF 1984"

BEFORE THE SENATE SUBCOMMITTEE ON THE CONSTITUTION

OF THE COMMITTEE ON THE JUDICIARY

JUNE 26, 1984

Mr. Chairman, and other members of the Committee, I consider it an honor and privilege for me to attend this public hearing and express a conservative point of view on S. 2568.

The members of this Committee well know what the intent, purpose, and scope of this legislation is; so I will not bore the Committee with a layman's explanation of the Bill.

Although I am Chancellor of Bob Jones University and Chairman of the Board and served as President of the University for some twenty-four years, I come to you today in my role as a Minister of the Gospel for more than fifty years and one who has traveled in almost every state of the Union during the past two years. I come to you as one who has spent time with what the news commentators have referred to as the "silent majority." The conservative working class of America is, I think, the backbone of our great nation.

The average American citizen is frustrated because he finds his life regulated by a central government made up primarily of unnamed, faceless bureaucrats. Federal regulation has grown to such an extent that many citizens find their lives regulated from the cradle to the grave and, yes, now we even regulate people beyond the grave with the newly adopted regulations governing the financing of burial services. Fifteen, ten, or even five years ago, some would have said that this kind of pervasive regulation of essentially local interests was not warranted and would not be possible in a free country, and yet, we see Congress enacting even more new regulatory laws each year.

I want to limit my comments to two basic points. First, I find an almost cavalier attitude in the Congress and in the Federal Bureaucracy toward the protection of religious freedom in this nation; and second, my layman's understanding of the concept of enumerated powers in the Federal Constitution suggests to me, and I hope suggests to this body, that there is a limit to government's ability to right imagined wrongs; i.e. the end of regulation, though it be laudable, does not justify any means to accomplish that laudable goal.

Not a week goes by without my receiving correspondence or telephone calls from a religious or other conservative organization which is being harassed by IRS or some other Federal bureaucracy. Religious persecution by bureaucracies, particularly by the IRS and various State Departments of Education which scorn the existence of Christian schools, is sweeping America. If this trend continues, freedom of religion as we have known it in this Country will not survive; and I predict that this nation will not survive if we ever get to the point where religious minorities are persecuted in the name of liberty or justice for other groups.

When the Supreme Court ruled in the Bob Jones University case that Constitutionally-guaranteed religious freedom was not as important as public policy, the justices violated their oath to uphold and defend the Constitution; but very few Congressmen and Senators demonstrated any interest in passing legislation to protect religious freedom.

The "Liberals," however, looked upon the Grove City decision as a blow to Civil Rights and immediately reacted by introducing the Civil Rights Act of 1984 to further infringe upon religious freedoms. So-called "civil rights," as presently promoted by the "Liberals," involve denial of individual rights and personal freedoms and is in direct violation of the Constitutional guarantees of liberty.

The taxation of churches and other religious institutions, simply because some of their religious beliefs do not conform to nebulous public policy established by bureaucrats, is a dangerous precedent; it is the kind of power which is subject to abuse and is tantamount to the government's establishing a preferred religion. I submit to you that this whole area of government-regulation of religious beliefs which are not, in fact, criminal should be reviewed by this august body. I do not think such regulation is in the overall best interests of our society, and I believe it is blatantly unconstitutional and Soviet-like in its practice.

I would like to see the Senate go on record with legislation which clearly affirms the precedential nature of First Amendment Rights over considerations of Federal public policy. Of course, I am familiar with the doctrine of "compelling State interest," but that phrase is just three words which have varied meanings, depending upon the philosophy of the individual justices or judges. Of course, it has a negative connotation toward conservative organizations when our law is so much based on sociological law rather than logic and the permanency of the Constitution of the United States.

Before I discuss my specific concern about S. 2568, let me just raise one other question for your consideration. Why is it that the IRS is so eager to harass, intimidate, and persecute churches and other conservative organizations with their detailed questioning, with their foot-dragging on approval of tax-exempt status and with their barrage of forms aimed at supervising the activities of conservative organizations? And yet, why is it also that they fail to check or even monitor blatant violations of law by liberal organizations?

Let me just cite one recent example. According to the news media, both the National Education Association and the National Organization for Women publicly endorsed one of the Democrat candidates for President. Of course, I am no attorney, but it is my understanding that there are specific regulations adopted by the IRS that prohibit this kind of political activity by any tax-exempt organization.

Why does the IRS not enforce those laws and move to remove the tax-exempt status of these two very "liberal" organizations?

My second major point is that S. 2568 should be reviewed in light of the doctrine that the power of the Federal Government to regulate and control private institutions and small businesses is restricted by the enumerated powers in the United States Constitution.

I have reviewed the language of S. 2568, and I have read a number of commentaries on the Bill. From my perspective as one who has traveled the length and breadth of this country, I find a ground-swell of opposition to any expansion of power in the federal bureaucracy which would authorize the Federal Government to arbitrarily regulate and control private institutions and even local units of government simply because they had been an indirect recipient of some federal dollars under such broadly-worded authority as is contained in S. 2568.

Let me begin with my premise. I had a lawyer friend review the most recent Civil Rights decision of the U.S. Supreme Court, Fire Fighters Local Union Number 1784, vs. Stotts, et al., decided June 12, 1984. My attorney friend, who has been involved in Civil Rights cases in Federal Court, tells me that this decision stands squarely for the principle that there is a limit to the remedies that can be fashioned in the name of Civil Rights under existing law. He also said that there is a limit to what can be done in the name of Civil Rights under the United States Constitution.

It is my understanding that most of the logic for the modern Civil Rights law comes from a single paragraph in McCullough vs. Maryland, decided in 1819, in which the Supreme Court stated the principle that Congress could adopt any reasonable legislation to enforce the enumerated powers set forth in the United States Constitution. That specific quote reads as follows:

> "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and

> spirit of the Constitution, are constitutional . . . ."

The point I wish to make, and which I hope the Senate will consider very seriously as it reviews and deliberates on this legislation, is that under the American system of government, a laudable end does not justify any means. I think it is unfortunate that the limits of the Supreme Court's approval of legislative authority in Congress stated in McCullough vs. Maryland has been forgotten. No legislation can be adopted in the name of any provision of the Constitution that is inconsistent with other provisions of the Constitution. I am afraid we have gotten into what one French philosopher described as legal plunder, the taking of one man's rights so that they can be given to another. We have forsaken our heritage, we have destroyed our Constitution, and we have chartered a course of self-destruction because we have abandoned the principle of making sure the means is just as laudable as the end.

Let me return to the specific finding of the Supreme Court in Fire Fighters vs. Stotts. After reviewing a lower Court decree which had mandated affirmative action discrimination contrary to a union contract, the Supreme Court described the limits of Title VII of the Civil Rights of 1964 as follows:

> "Our ruling in Teamsters that a court can award competitive seniority only when the beneficiary of the award has actually been a victim of illegal discrimination is consistent with the policy behind 706(g) of Title VII, which affects the remedies available in Title VII litigation. That policy, which is to provide make-whole relief only to those who have been actual victims of illegal discrimination, was repeatedly expressed by the sponsors of the Act during the congressional debates. Opponents of the legislation that became Title VII charged that if the bill were enacted, employers could be ordered to hire and promote persons in order to achieve a racially-balanced work force even though those persons had not been victims of illegal discrimination."

In noting the pertinent discussion in the Senate by the floor manager of the Bill as the limits of remedies, the Supreme Court quoted Senator Hubert Humphrey as follows:

> "Contrary to the allegations of some opponents of this Title, there is nothing in it that will give any power to the Commission or to any Court to require . . . firing . . . of employees in order to meet a racial "quota" or to achieve a certain racial balance."

My point is simply this: there is a limit to the authority of any legislation, no matter how laudable the goal, if we are to live within the confines of a Constitutional system of government.

I trust that my comments will not be considered trite or superfluous, but no one would suggest that a criminal who was caught in cold-blooded murder should be denied his Constitutional right to a free trial. I am simply saying that any legislation that seeks to extend the authority of the Federal Bureaucracy in the area of enforcing Civil Rights laws should be reviewed in the context of the enumerated powers in the Constitution and the principle that there is a limit to the means that can be used to accomplish a laudable goal.

Let me be more specific about some of my particular concerns about the language that is presently contained in S. 2568.

I am, of course, concerned, as are all the opponents to this legislation, about the broad definition of "recipient" which would have the effect of overturning the Grove City College decision. I hope no Senator who has pledged to uphold the Constitution would take his task so lightly as to concede that there is a need to overturn the U.S. Supreme Court decision in the Grove City case.

I would go so far as to suggest that Congress should even review the whole concept of who is the recipient of Federal Funds. I am not even sure of the validity of the part of the decision which determined the college was a recipient because a few students were getting Federal education grants, just as I am not sure it should be determined that a student going to a college under the GI Bill results in Federal financial assistance to the institution. I understand that I am raising some questions that will hardly see the light of day; but that doesn't mean that a shrinking minority, yes, a persecuted minority--private, religious educational institutions in this country--should not be heard from and their position should not be considered. I can find no logic to the reasoning that says when one little segment of a private institution is a beneficiary of some small amount of Federal financial assistance, the whole institution should be entangled in a web of legal and bureaucratic controversy in order to correct a single violation of a single Civil Rights regulation.

On this point, although there has been some assurance by the proponents of this legislation that tax exemptions and tax deductions would continue to be excluded from the definition of Federal financial assistance, I can tell you from experience that the bureaucrats will find some way of changing that law through bureaucratic interpretation and through the implementation of public policy against conservative institutions across this nation. The Supreme Court, in the Bob Jones University case, has already ruled that tax exemption constitutes Federal financial assistance.

This august body is considering legislation that could be catastrophic. The passage of this Bill could strike the death knell for all private institutions as we have known them in this nation. The passage of S. 2568 could very well destroy the pluralism that has made this nation great. Unless some of the nebulous language which is contained in the Bill at this time is tightened, so as to require pinpointing of the termination of funds, and so as to limit the ultimate reach of the regulatory authority of Federal Bureaucracies from entrapping private citizens as ultimate beneficiaries of Federal financial assistance in extended litigation, then this Bill could be the death of the private free enterprise system in America. Democracy in this land has survived more than 200 years because of pluralism, because of diversity, because of dissent, and, yes, because of non-conformity to some of the half-baked ideas cooked up in Washington.

My reading of the Commentaries on S. 2568 convinces me that the obvious result of its enactment would be an immediate extension of Federal regulatory power with regard to age, sex, handicapped, and race discrimination to virtually all of the activities of every state and political subdivision in the land.

I think it has been conceded by the proponents that aid to a State Government would bring all counties, cities, villages, school districts, and every other local sub-unit of government under the control of the Federal bureaucracy. Simply because the State receives a single Federal grant, automatically all of its sub-units are brought within the coverage of age, sex, handicap, and race discrimination statutes and regulations.

The broad and almost unlimited scope of this new enforcement power for the Federal bureaucracy was accurately described in the Wall Street Journal of May 23, 1984, by Chester E. Finn, Jr.:

> "In short, assistance of any kind to any part of any public or private enterprise will trigger all the civil-rights regulations and enforcement procedures of all the cognizant federal agencies with respect to all other parts of the enterprise, however remote they may be from the part being aided. If a state education department receives funds from the U.S. Education Department (as they all do), the Office for Civil Rights gains jurisdiction over that state's highway department. If a municipal hospital is assisted by the Public Health Service, the city's police and fire departments will become subject to challenge by the Department of Health and Human Services if they reject job applicants with heart conditions."

I do not think this Committee should favorably report this Bill until the questions about the spending of Social Security checks and the use of Food Stamps in the "Mom and Pop" grocery stores have been satisfactorily answered. To me, the definition of the words "recipients" and "transferee" raises innumerable possibilities of government regulation of heretofore private, non-government entities.

Perhaps the following may seem at this time to be so far out as to deserve no consideration; but knowing how the IRS usurps to itself most outrageous powers, I feel the injection of a hypothetical question is entirely warranted. Suppose an employee of the IRS donated to his church by endorsing over to it the check from the IRS representing the return on his personal income tax. Is there not a possibility that the IRS could hold that this was a primary or secondary government benefit and proceed against that church?

I am equally concerned about the question of whether or not unintentional racial or sexual discrimination should trigger the possibility of private law suits against private entrepreneurs who never intended their actions to be discriminatory. Of course, this raises a question of whether the new law would regulate intentional discrimination or use the so-called "effects test."

I plead with this Committee to have all of these questions answered clearly and without equivocation before this Bill reaches the floor of the Senate. Of course, this question is also complicated by the coverage of the Bill for indirect aid as well as direct assistance. All of these things create the possibility of an insurmountable mountain of litigation which, in and of itself, threatens the very existence of many institutions in this Country.

Maybe I should conclude by quoting something which has been quoted a number of times already, the statement by Harvard Law School Professor Charles Fried in his testimony on May 30 before Senator Hatch's Judiciary subcommittee on the Constitution in which Professor Fried said of S. 2568:

> This Bill represents our legislative process at its worst. It would make major changes in the structure of our anti-discrimination laws in the balance of responsibility between Federal government and the States, in the balance between the responsibilities and the prerogatives of private institutions and bureaucratic authority over those institutions.

Members of this Committee, I could talk for hours from experience that the American people are just about fed-up with over-taxation, over-regulation, and the legal plunder that is represented with this kind of legislation.

I respectfully suggest to you that if most of the kinds of legislation which have been passed in the name of Civil Rights, except that which is aimed at specific acts of intentional discrimination, were put to the American people in the form of a referendum, the overwhelming majority of Americans would vote to repeal much of this legislation.

In conclusion, I simply ask you to consider: is the means as laudable as the end? I hope you believe as I do, and as do most Americans, that the end does not justify the means.

Bob Jones

TESTIMONY OF REV. JOHN D. STANARD III
DIRECTOR, CHURCH OF SCIENTOLOGY, NATIONAL PUBLIC AFFAIRS OFFICE
before
SEN. ORRIN HATCH AND THE SENATE SUBCOMMITTEE ON THE CONSTITUTION

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Rev. John D. Stanard III and the Director of the newly formed Church of Scientology, National Public Affairs Office located here in Washington, D.C. I thank you for this opportunity to comment on the important topic of religious liberty and I offer what I believe is a unique perspective which my Church has on these matters.

Religious Liberty brings back vivid images of the Children of Isreal driven into the desert for forty years seeking a promised land and suffering privations of magnitude in order to obtain that promised land.

Religious Liberty brings to mind the fight that Christ had bringing his wisdom to earth when he had but 12 followers, one of whom betrayed all of the rest. The State assisted in his crucifixion.

In America one can find the attacks on the members of the Church of Jesus Christ of Latter Day Saints who were ordered exterminated by Governor Boggs. Their founder Joseph Smith was slain by assassins bullets and the State sanctioned the action. A people were driven from their homes that they had salvaged from swampland and made fertile and they were driven out and went to the land of Deseret in Utah.

In the 1950's our religious beliefs and practices came upon the forefront of American thought. L. Ron Hubbard, founder of the Scientology religion, published his first work on the mind and spirit of man, Dianetics: The Modern Science of Mental Health. The book offered a new approach to many of the ills and aggravations of man based on the mind and spirit. Almost immediately Hubbard and the newly formed Church of Scientology came under vicious attacks from the Medical/Mental Health establishment, namely the American Medical Association, the American Psychiatric Association and other such groups.

It quickly became apparent that our new religion had run afoul of men actually opposed to religion and spiritual thought. Institutional Psychiatry, formed in such groups as the World Federation of Mental Health, had actually articulated anti-religious plans many years prior to the formation of our Church. In the 1940's Dr. G. Brock Chisholm, a former President of the WFMH and a leading spokesman for the Institutional Psychiatric movement, stated that the primary goals of psychiatry were the elimination of morality, including such harmful concepts as 'right' and 'wrong', and the "infiltration" of the religious, legal and educational professions.Dr.Chisholm called the teachings at Sunday schools and given by Ministers "poisonous certainties".

As an alternative to religious teaching and morality, Dr. Chisholm offered electro-shock, psycho-surgery (lobotomy), chemical shock, hypno and narco analysis and other gruesome "therapies". The Church of Scientology was, and to this day is, one of the most outspoken critics of these dangerous and morally repugnant practices. Unfortunately for us, the proponents of this lucrative trade have friends in governments around the world whom they have been able to manipulate to serve their own ends.

Thus began a long saga of confrontations for survival between my Church and the sometimes hidden forces of Institutional Psychiatry. Thus began a psychiatric disinformation campaign of magnitude which, continuing to this day, has included the creation of large dossiers of false and misleading information within many federal agencies. One for one these dossiers contain misleading, irrelevant and false information about the Church, its beliefs and practices. This information is freely passed between the agencies and often transmitted outside the country to foreign governments - usually with disastrous results.

* In 1963, spurred on by vested interest of the Mental Health establishment, the Food and Drug

Administration in Washington, D.C. raided the Founding Church of Scientology seizing confessional aids used on Scientology spiritual counselling as well as all written materials used by Scientologists in the practice of their faith. Counselling sessions were broken up by Deputy Marshalls and the entire Church building was ransacked.

The FDA based the raid on the false assumption that our Church promoted medical cures from our spiritual counselling. This false information was supplied by certain psychiatrists antagonistic to Scientology and our spiritual counselling methods.

It took 10 years of hard fought and expensive litigation to win back the right to use our confessional aids and religious materials.

* In the late 1960's, false and misleading information in the FDA files was sent to Mental Health authorities in Australia, again at the urging of certain U.S. psychiatrists. This information was used to actually outlaw the practice of Scientology in two Australian States.

Although the law was rescinded in 1973, and formal apology made to the Church by the Premier of Western Australia, much damage was done.

* In 1977 two of our U.S. Churches were raided. One of the instructions given the raiding agents was to look for and seize any files containing material about the American Medical Association and the American Psychiatric Association. While a few over-zealous staff, weary of the long years of harassments, did violate the law in their attempts to uncover the false dossiers maintained by many agencies, the raid itself as executed was needlessly brutal. 135 agents conducted what many have called the largest raid in FBI history.

* One of our organizations located in Guatemala

was denied a license to operate in 1982 based directly on false information given the Guatemalan Embassy in Washington, D.C. by a Justice Dept. attorney.

* We have linked U.S. agency transmittals of false and questionable information with the raid conducted on one of our Canadian Churches in 1983 and with raids on Churches in Germany and Italy in 1984.

This is but a sampling of the devastating effect such transmittals can have. The dossier machine, set up years ago by vested interests of the Institutional Psychiatric movement long opposed to religious thought and practice, operates even today. Apparently these same vested interests, operating with some new faces such as psychiatrist Dr. John Clark who is leading the fight against new religions here and in Europe, are continuing to operate in America today unabated. How else do we explain the unprecedented assaults on religious liberty over the last few years?

Rev. Moon and his Church stop drug use and illicit sex, preach morality and assist millions of people.

Pastor Sileven from Nebraska starts a Christian school teaching the moral principles of right and wrong in addition to basic education.

L. Ron Hubbard develops a workable solution to drug addiction and a powerful new technology of study that is currently helping millions of people worldwide.

The rewards?

Hubbard is attacked for his work, Pastor Sileven is driven from the State under threat of arrest and Rev. Moon faces a jail sentence.

Other religions across America and other countries offer the same wholesome atmosphere. The Oral Roberts, the Jim Bakers, the Pat Robertsons, other evangelicals, the Mormons, Baptists, Methodists, Catholics, Lutherans, Episcopalians, Buddhists, Vedantists, Hare Krishna's are offering a drugless society and better education. Why are they being attacked? How does Institutional Psychiatry continue to use the government for its vituperation of religion?

We have spent millions, we will probably spend more millions before this is through. Religions are being driven together as they have picked up the banner of morality and started a return to time honored ideals such as the family. This will continue against the anti-morality psychiatric movement protected by the misguided few serving their interests in government.

How long does religion have to fight?

In 1934, in the small town of Barmen in the Rhur valley of Germany, a small conference of religious leaders and laymen from the free Churches gathered to warn of the impending storm in Europe. They expressed the principles of God fearing men. They did not know the names of the doctors and chief psychiatrists who would plan the holocaust as it was just then beginning - with the slaughter of thousands of helpless mental patients and other "genetic defectives" in German institutions. They did not foresee the rape of Europe or the genocide of races coming. They were however men of such spiritual vision that they saw the need for religions to stand together. They were men like Karl Barth, Eric Bonhoffer and Pastor Martin Neimoller.

Pastor Neimoller summed it up:

> "In Germany, the Nazis came for the communists, and I didn't speak up because I was not a communist. Then they came for the Jews and I did not speak up because I was not a Jew. Then they came for the Trade Unionists and I did not speak up because I wasn't a Trade Unionist. Then they came for the Catholics and I was a Protestant so I didn't speak up. Then they came for me...by that time there was no one to speak up for anyone."

The religions will not become victims. We are growing in our convictions. Religion makes the future of this country. Religions are the hope for sanity, morality, honesty, production and drugless states of ability. Our liberty is the liberty of the spirit and our freedom is the freedom of God. We shall not be held down or victimized by the godless vested interests of Institutional Psychiatry who oppose spiritual practice, who label religious experience 'mental illness', who created such 'wonder drugs' as LSD for our children and who utilize such barbaric "treatment" on our people as electric shock and lobotomy.

The use by these special interests of our own government agencies to forward their anti-religious campaigns must come to an end. Currently our National Institue of Mental Health provides funds to a psychiatrist in Los Angeles, Dr. Louis Josslyn "Jolly" West of the U.C.L.A. Neuropsychiatric Institute, who has sponsored anti-religious seminars and travelled to Europe promoting his campaign against new religions.

So far neither the Judicial nor Executive branches have taken effective action to stop the assault on religion. We hope and pray that legislators with courage and vision, such as the honorable members of this Subcommittee, can face and solve the problems of religious liberty confronting us in America today.

* * * * *

THE CHURCH OF SCIENTOLOGY

CREED

We of the Church believe:

That all men of whatever race, colour or creed were created with equal rights.

That all men have inalienable rights to their own religious practices and their performance.

That all men have inalienable rights to their own lives.

That all men have inalienable rights to their sanity.

That all men have inalienable rights to their own defence.

That all men have inalienable rights to conceive, choose, assist
and support their own organizations, churches and governments.

That all men have inalienable rights to think freely, to talk freely, to write freely
their own opinions and to counter or utter or write upon the opinions of others.

That all men have inalienable rights to the creation of their own kind.

That the souls of men have the rights of men.

That the study of the mind and the healing of mentally caused ills should not
be alienated from religion or condoned in non-religious fields.

And that no agency less than God has the power to suspend or
set aside these rights, overtly or covertly.

And we of the Church believe:

That man is basically good.

That he is seeking to survive.

That his survival depends upon himself and upon his fellows,
and his attainment of brotherhood with the Universe.

And we of the Church believe that the laws of God forbid Man:

To destroy his own kind.

To destroy the sanity of another.

To destroy or enslave another's soul.

To destroy or reduce the survival of one's companions or one's group.

And we of the Church believe:

That the spirit can be saved *and*

That the spirit alone may save or heal the body.

THE SYNANON CHURCH

Charles E. Dederich founded Synanon in 1958 with his $33 unemployment check. Articles of Incorporation were filed with the California Secretary of State on September 18, 1958 under the name Synanon Foundation, Inc. Synanon was organized and has been operated at all times since its incorporation in 1958 exclusively for purposes expressly within the meaning of Internal Revenue Code section 501(c)(3) and is a non-profit, religious corporation, organized and existing under the laws of the State of California. Synanon was granted tax-exempt status in 1960. From 1960 to 1982, Synanon was recognized by the Internal Revenue Service as a tax-exempt organization. Our tax exemption for years 1977 and 1978 was revoked in May, 1982.

Although Synanon's religious and charitable activities are many, the most dramatic has been the effort to rehabilitate and reeducate over 15,000 people who have come to Synanon in trouble, seeking help. When the first drug addict came to Synanon, the assumption that "once an addict always an addict" was challenged and proven wrong.

Today, Synanon's methods and philosophy are widely used in state and federal correctional systems, in our country's educational institutions, by the informal network of organizations which currently distribute surplus food and materials to the needy, and in thousands of rehabilitation organizations which are modeled on Synanon.

Synanon is one of the few modern American charitable organizations which has not relied on Government funding. Rather, Synanon has a fundamental religious belief that people, individually and collectively, should strive towards self-reliance. Synanon has developed businesses that teach job skills and make the organization largely self-supporting.

The Synanon Church also teaches that we must act as our brother's keeper. Therefore, our religious community has kept its doors open and food supplies flowing to those in need, even without recognition from the I.R.S. of our tax-exempt status and while this matter is still pending in the courts.

Although Synanon is best known for its work with addicts, other charitable and religious works include operation of schools, a vocational college, research into and dissemination of information about alienation, chemical dependence, delinquency, criminality and the care of senior citizens. In addition, Synanon has spawned a network of organizations that distribute food and other necessities of life to the needy.

Synanon, like many other new religions in America, faces tremendous persecution from the U.S. Government, specifically the Internal Revenue Service and the Department of Justice. The facts are presented below.

"The power to tax is the power to destroy" (Chief Justice Marshall, 1819)

Over the past 25 years, the Internal Revenue Service has conducted four audits of Synanon's charitable and religious works. At the end of each of the first three audits, the auditing agent recommended "no change" in Synanon's tax-exempt status.

The fourth audit which began in March, 1979, clearly demonstrates the intent of the Internal Revenue Service to use its power to tax as power to destroy. The following facts were all admitted by Les Brandin, the agent assigned to the audit of Synanon, during deposition under oath on May 5, 1983:

(1) In November, 1979, Agent Brandin submitted a Request for Technical Advice to the National Office of the I.R.S. His conclusions were based on an 8-month audit of Synanon. He concluded that none of the net earnings of Synanon were inured to the benefit of any private individual and that Synanon was organized for exempt purposes.

(2) In January, 1980, the Request for Technical Advice was withdrawn by Agent Brandin's District Office. Brandin was told by Mr. Beck, Chief of Technical Review of the San Francisco District Office of the I.R.S., that the reason for withdrawal was that people in the National Office would have to rule in favor of Synanon.

(3) On January 10, 1980, the I.R.S. District Office issued a memorandum requesting further examination of eight issues concerning Synanon. Agent Brandin had already examined seven of the eight issues and had sufficient information regarding these issues. The remaining eighth issue was irrelevant to the audit since it concerned events outside the time period of his examination.

(4) Agent Brandin and his Group Manager, Les Stepner, met with Synanon representatives and obtained additional information concerning all of the items and issues in the January 10, 1980 memorandum. As always, Synanon provided all information and documents requested by the I.R.S. agents.

(5) Both Agents Brandin and Stepner determined that the issues in the January 10, 1980 memorandum had no adverse impact on Synanon's tax-exempt status.

(6) At the end of his audit in March, 1980, after many, many trips to Synanon's facilities and a review of Synanon's records, Agent Brandin prepared his Revenue Agent Report. His report stated his conclusion that Synanon was tax-exempt under I.R.C. section 501(c)(3) and that Synanon should retain its tax-exempt status.

(7) Brandin's Revenue Agent Report stated that there was no private inurement in Synanon, that Synanon's research, scientific and literary activities were within the scope of I.R.C. section 501(c)(3), that Synanon did not participate in legislative activities or political campaign activities, and that the presence of a community of diverse people contributed to the charitable purposes of Synanon. Agent Brandin submitted a "no change" recommendation in Synanon's tax-exempt status.

(8) Agent Brandin was immediately replaced as the I.R.S. agent for Synanon's audit because he had reached a result favorable to Synanon in his Revenue Agent Report.

On June 25, 1980, Bob Chui replaced Les Brandin as the agent in charge of Synanon's audit. Representatives of Synanon were informed that Agent Chui would be redeveloping Synanon's case, and that Mr. Brandin had been reassigned due to other priorities. Agent Chui visited Synanon's religious communities only a few times between July 22 and November 10, 1980.

On November 7, 1980, the Internal Revenue Service made a second request for Technical Advice to the National Office. In June, 1981, Synanon's representatives went to the National Office in Washington, D.C. to clarify our position with respect to the second Technical Advice memorandum. In full cooperation with the Internal Revenue Service, Synanon provided more information in August and September of 1981.

On May 19, 1982, over three years after the fourth audit of Synanon had begun, the Internal Revenue Service mailed its final adverse ruling letter and revoked Synanon's tax-exemption.

Synanon Pursues Its Legal Remedies

Synanon filed a lawsuit for declaratory action, pursuant to section 7428 of Federal Rules of Civil Procedure, against the Internal Revenue Service on August 16, 1982 to preserve our constitutional rights of freedom of religion.

This lawsuit was filed because the Internal Revenue Service refused to treat Synanon as a religion and a church, and because of our belief that the Internal Revenue Service has selectively enforced the law to discriminate against Synanon and thus has endangered the continuation of Synanon's important religious and charitable works.

Synanon has been denied the opportunity to fairly litigate this lawsuit on its merits. From the date of filing our complaint to the present, Synanon has been denied discovery of facts essential to meet the burden of proving these charges against the Internal Revenue Service. For example, Synanon has not been permitted to take the depositions of any employees of the Internal Revenue Service, with the exception of one day's deposition of Agent Brandin. Furthermore, the Department of Justice has subpoenaed and secreted away documents which Synanon has not been permitted to review. The Department of Justice has commingled civil and criminal investigations of Synanon -- an impermissible tactic -- in order to gain an unfair advantage over Synanon and to prevent Synanon from litigating its action against the I.R.S.

In March, 1983, the Government filed its first Motion to Dismiss the action and a Motion for Summary Judgment. Synanon responded with its own Cross-Motion for Summary Judgment, requesting that the issues be decided in Synanon's favor. Included in Synanon's papers were over 350 affidavits from current and former residents of Synanon, experts on religion and others acquainted with Synanon's charitable and religious works. These affidavits answered each of the allegations made by the Government against Synanon. The Court never ruled on the Government's motions or Synanon's Cross-Motion for Summary Judgment.

At the end of 1983, the Government filed its second Motion for Summary Judgment and Motion to Dismiss the action. The Government alleged that Synanon had engaged in a corporate policy of violence seven years ago and had systematically destroyed documents. Synanon denied the truth of these allegations and has never had the opportunity to litigate fully these issues before the federal court. On February 9, 1984, Judge Richey granted the Government's Motion to Dismiss; thus, Synanon's complaint against the Internal Revenue Service was dismissed. Synanon has appealed this decision.

The $55 Million Tax Bill

The legislative intent of section 7428 of the Federal Rules of Civil Procedure was to enable a charitable and/or religious organization to bring a denial or revocation of I.R.S. recognition of tax-exempt status to the courts prior to being forced to pay its taxes. Synanon's action for declaratory relief against the I.R.S. has not been decided on the merits. Therefore, all appeals should be exhausted before the injunctive-like authority of section 7428 is dissolved.

On Monday, February 13, 1984, four days after Judge Richey's decision and even before Synanon had an opportunity to prepare and file the Notice of Appeal, the Internal Revenue Service delivered to The Synanon Church a series of tax bills totalling $55 million for years 1977-1983. In March, 1983 Judge Richey had issued an opinion that his Court lacked jurisdiction to grant declaratory relief under 26 USC section 7428 for years after fiscal 1978 because there was no final adverse determination for those years. The I.R.S. had revoked Synanon's exemption for years 1977 and 1978 only. There was no determination for years 1979-1983. Despite this, the $55 million tax bill was for years 1979-1983.

To meet this demand, The Synanon Church would have had to turn over its entire gross revenues for the next twelve years without incurring a single expense. Synanon's revenues in the year ending August 31, 1981 were approximately $4.9 million. For the year 1982, the total was $4.6 million, and, in 1983, it was $4 million. These figures total $13.5 million for the past three years and are the gross revenues of Synanon. They do not include any expenses of any kind or payments for any obligations.

The haste with which the Internal Revenue Service prepared these tax bills became immediately evident when accountants reviewed the bills and found a $10 million computational error in the assessment of interest. Ten million dollars may not be much to the Internal Revenue Service, but it is a tremendous amount to the people of Synanon!

In June, 1984, the I.R.S. presented Synanon with a revised tax bill totalling $3.9 million. This bill is $51.1 million less than the original bill! "Computational errors" of such overwhelming magnitude demonstrate the malice of the I.R.S. toward Synanon.

On February 13, 1984, upon serving the tax bill, the I.R.S. impounded Synanon's bank accounts, seizing Synanon's available cash. In addition, the I.R.S. placed liens on Synanon's properties in California. These actions were widely publicized, had a negative effect on Synanon's ability to do business and created tremendous fear and insecurity among Synanon's residents.

Within one week, representatives of Synanon met with I.R.S. agents at Synanon's community in Badger, California to discuss the effects of the seizure of Synanon's funds, the liens on our property and the $55 million tax bill. The I.R.S. agents subsequently agreed to return the cash to Synanon and to not collect taxes until Synanon's appeals had been exhausted.

Two weeks later, the I.R.S. presented Synanon with a bill for approximately $750,000 for social security taxes. Furthermore, the I.R.S. demanded explanations for all current and future expenditures of Synanon, thus assuming power to control Synanon's budget. The I.R.S. has agreed to stay collection of any FICA taxes until there has been a resolution of the lawsuit filed by Synanon on the FICA taxes.

The unpredictability of the I.R.S.'s actions proves their earlier assurances meaningless and reveals the true intent of the I.R.S., which is not to collect taxes but to render Synanon incapable of future operation.

On March 16, 1984, The Synanon Church sent a letter, pursuant to I.R.C. section 7429, to the Secretary of the Treasury, Donald T. Regan, requesting administrative review of the jeopardy assessment made against The Synanon Church. The eighteen-page letter sets forth evidence of the unreasonable and unjustifiable jeopardy assessment which discriminates against and injures The Synanon Church. The letter further specifies how the law requires immediate abatement of this assessment.

Unless the I.R.S. stays all attempts to collect taxes until the issue of Synanon's tax exemption is ultimately decided in higher courts, Synanon and the Government will be forced to expend enormous amounts of money and energy litigating separate issues such as jeopardy, amount of assessment and refunds for all years in question. Also, it would be wise to await the decisions of the higher courts on issues which would only have to be relitigated for each year after 1978. Synanon has the choice of closing its doors or allowing several auditors to again come to Synanon and conduct an audit. Faced with this alternative, Synanon has consented to an audit which we believe is improper and has agreed to pay taxes under protest while our lawsuit is pending. We have repeatedly tried to get the I.R.S. to follow procedures for an audit of a church, and they have repeatedly refused to do so.

Is This What was Supposed to Happen in 1984?

The present approach by the I.R.S. and Department of Justice could force Synanon to close its doors. Over 550 people would be homeless. Many of these people are children, drug addicts, alcoholics, handicapped or senior citizens and those who are otherwise incapable of earning a living. Reason and rule of law will once again fall to prejudice, political expediency and ignorance.

Any beliefs, be they religious or philosophical, cannot be destroyed by a Government. They will either endure or not endure in the hearts and minds of the people who hold them. Only history bears witness to this. Unfortunately, there are hundreds of people in Synanon and many more throughout the country who are not in a position to wait for history to unfold.

We should mark 1984 not with a series of Orwellian nightmares, but move forward with compassion, courage and reason.

LETTERS AND ENCLOSURES

DEPARTMENT OF PUBLIC AFFAIRS
AND RELIGIOUS LIBERTY

General Conference of
Seventh-day Adventists
CHURCH WORLD HEADQUARTERS: 6840 EASTERN AVENUE NW, WASHINGTON, DC 20012 USA
TELEPHONE: (202) 722-6000 • CABLE: ADVENTIST, WASHINGTON • TELEX: 89-580

June 22, 1984

The Honorable Orrin G. Hatch
Chairman
Senate Subcommittee on the
Constitution
135 Russell Senate Office Building
Washington, D.C. 20510

Dear Senate Hatch:

This is to request that the enclosed materials be included in the printed report of your June 26, 1984 subcommittee hearing on religious liberty in the United States. The materials are excerpted from the current May/June edition of LIBERTY magazine--America's best known First Amendment journal.

A copy of your report would be very much appreciated if you could send one to us.

Thank you very much.

Yours sincerely,

G.M. Ross

G. M. Ross, Ph.D.
Associate Director and
Congressional Liaison

GMR/hmd

Enclosures

GOVERNMENT REGULATION

UNCLE SAM
Church Inspector

BY DEAN M. KELLEY

There is a growing notion that government has the duty to inspect, register, and certify religion as it does meat.

Too many civil libertarians are fighting a rearguard action against an enemy no longer present. Thirty and 40 years ago—and longer—the danger seemed to be the overdominance of religious groups. And we went to war, not to the tune of the "Battle Hymn of the Republic," but chanting words from the First Amendment—"Congress shall make no law respecting an establishment of religion." For us, "separation of church and state" was a battle cry meaning "Stop the Catholic Church!" Or, for some, "Stop all the churches." Even today some libertarians seem more solicitous for the rights of anti-Semites, homosexuals, and pornographers than they are for the rights of religious bodies to live their chosen model of the good life as guaranteed by the Free Exercise Clause of the First Amendment. In fact, only now are we beginning to recognize that government intervention in religious affairs is the largest, most nebulous, pervasive, and portentous religious-freedom issue of our day.

February, 1981, is a significant date in our growing awareness. On that date, groups representing more than 90 percent of organized religion met in Washington, D.C. The 280 delegates made the conference the most inclusive gathering of religious representatives in the nation's history! Why the meeting of such diverse bodies as the National Council of Churches, the U.S. Catholic Conference, the Synagogue Council of America, the National Association of Evangelicals, the Lutheran Council in the U.S.A., and the Southern Baptist Convention—all sponsors—and the Mormons, Salvation Army, Seventh-day Adventists, Christian Scientists, Unitarians, and a number of other unaffiliated bodies? Because of a common concern about government intervention in religious affairs.

At the beginning of the conference the chairman, William P. Thompson, chief executive officer of the United Presbyterian Church, listed 17 areas in which national or state governments have been intervening in religious activities or institutions. Some interventions have been halted by the courts; others are still going on. Some may seem minor or even justifiable, but cumulatively they form an ominous pattern. Among the 17 issues were:

1. Regulation of religious fund-raising.
2. Lobbying disclosure requirements of religious bodies thought to be trying to influence legislation.
3. Regulation of curriculum content and teachers' qualifications in private religious schools.
4. Requirements that church-related colleges institute coeducational sports, hygiene instruction, and dormitory and off-campus residence facilities that they may consider morally objectionable.
5. Threats to such colleges and even theological seminaries to cut off loans or other aid to students if the schools do not report admissions and employment dates by race, sex, and religion, even though the schools receive no direct government aid.
6. Sampling surveys of churches by the Bureau of the Census, requiring voluminous reports, though the Bureau admitted it had no authority to do so.
7. Grand jury interrogation of church workers about internal affairs of churches.
8. Use by intelligence agencies of clergy or missionaries as informants.
9. Subpoenas of ecclesiastical records by parties in civil and criminal suits.
10. Placing a church in receivership because of complaints by dissident members of alleged financial mismanagement.
11. Withdrawal of tax exemption from various religious

Dean M. Kelley is director of religious and civil liberty for the National Council of Churches in the United States.

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ILLUSTRATION BY REBECCA LEE
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groups for alleged "violation of public policy."

12. Definition of what is "religion" or "religious" activity by courts or administrative agencies, contrary to the long-standing definition by churches.

13. Redefinition by courts of ecclesiastical polities, so that hierarchical churches are "congregationalized," while "connectional" churches are deemed hierarchical, contrary to their own self-definition.

. 14 Denying to church agencies or institutions the exemptions afforded to "churches," thus in effect dismembering the churches.

When Government Intervention Is Legitimate

The conference did not assume that government regulation or intervention is never necessary or justifiable; in fact, the concluding paper was entitled "When Is Governmental Intervention Legitimate?" The answer is, When necessary to protect public health and safety (narrowly defined, and not including such amorphous quantities as "public order, good, or morals").

The conference sought to correct the common notion that government knows best and can order the affairs of life better than individuals and private groups can if left to their own devices. Certainly religious groups over the centuries have done at least as well as governments in envisioning and embodying the good life. They invented and initiated general education long before there were public schools, and now the public authorities are trying to tell *them* how to *educate?* They pioneered in health care of the poor and aged long before there were public hospitals, and now the public authorities are trying to tell them how to care for people's health needs?—especially when the *public* institutions of education and health care often fail to live up to the very standards public authorities seek to impose on *private* agencies?

Private and church-related schools, hospitals, homes, and other institutions usually do as good a job as public institutions. Sometimes they do better, sometimes worse, but the very meaning of *better* and *worse* is precisely what government—except in the most obvious matters of health and safety—is not equipped to determine!

A good example is the Amish. Their mode and measure of education have been criticized by state departments of education as not preparing their children to survive and compete in the modern world. But that is exactly what they do not want to do, believing as they do that the modern, technological, materialistic culture is the very opposite of the good life! They want to live a simple agrarian communal life permeated by religious values, and it is for that that they train their children. And they do a pretty good job of it.

The ideal education is one in which the younger generation learns by doing alongside the older generation, thus gaining the knowledge and skills necessary for successful living. Modern society has provided special environments with full-time teachers who try to import a little of the "real" world into the classroom. But the Amish, who were teaching all their members to read and write back in the sixteenth century, when there was neither public nor private general education, already have the ideal educational arrangement of life apprenticeship in the "real" world. They educate successfully, with no felons or public dependents. And the public authorities want them to substitute artificial classrooms for that real-life experience!

It is true that not many Amish youngsters become nuclear physicists—or want to, or know what that is. But they may be just as well off for that lack. It depends on what one believes the good life to be. And that is precisely the question that the government cannot decide, nor can all the citizenry voting en masse. Civil libertarians can get enthusiastic about the rights of alternate life-styles—of flower children or homosexuals or feminists or environmentalists with their solar-heated, organic-nature communes—but not about the like rights of *religious* alternative life-styles. The most untraditional alternative life-style going today is the Amish! Private school educators seem to aspire to shape their schools as much like conventional public schools as possible—all, that is, but the Amish, who want their educational process to be as much unlike the conventional model as possible.

Real civil libertarians, it seems to me, should be solicitous for the rights of religious bodies to live out their chosen model of the good life in maximum freedom. But the libertarian image still seems to be antireligious and, specifically, anti-Catholic. Whatever justification there may have been for that concept and strategy 30 or 40 years ago, I submit that it is no longer justified.

The Roman Catholic Church today shows little of the aggressive, autocratic, triumphalist pretensions of a Cardinal Spellman (or when it does, they are soon deflated or disregarded by a very independent laity). The other churches are even less assertive in requiring serious discipleship (or when they do try to assert themselves, no one takes them very seriously, because they don't take themselves very seriously).

Much of the vigor and vitality in American religious life today is in the smaller, newer groups: The Pentecostals, charismatics, evangelicals, and the new religious movements often stigmatized as cults. They are the very ones of whom society is least tolerant—for the ironic reason that they are the ones for whom religion makes a real difference! If they were more placid and conventional in their beliefs and behavior they would get along a lot better—and make a lesser contribution to the health of the nation!

Ultimate Definitions

Vigorous and effective religion, I believe, is of great secular importance to society. The function of religion is to explain the meaning of life in ultimate terms to its adherents. If society does not contain within itself the means for such expression, it will be vulnerable to the maladies of meaninglessness that are increasingly prevalent today: disorientation, anxiety, resentment, bitterness, guilt, despair, vagabondage, various addictions, derangements, escapisms, and even some forms of crime and suicide. Because these may threaten the survival of society itself, it is of secular importance to society that thriving, effective religious organizations provide that function.

Governments have tried to ensure that function by "establishing" one or more churches to do the job. Unfortunately, the very act of establishing a religion tends to disqualify it for meeting the religious needs of those most needing help: the have-nots, the poor and oppressed of the population. After centuries of costly trial and error it was discovered that governmental help to religion is no real help at all in getting the function of religion performed. So the founders of our nation tried a heroic experiment, and the only workable strategy for the public and the state with respect to religion: *to leave it alone*.

But now for 200 years we have been struggling with the fascinating riddle of what it means to leave religion alone. It means—among other things—that the government may not espouse, sponsor, promote, support, hinder, or inhibit any religion, all religions, or prefer one religion over another, nor may it become "excessively entangled" with religion. Thus the Establishment Clause has become well defined, but often at the expense of the second clause of the First Amendment: "or prohibiting the free exercise thereof."

Expansionist Government

The problem of the moment, as I see it, is no longer resisting the encroachment of expansionist churches, but resisting the encroachment of expansionist government. Too many militant civil libertarians are still fighting the battles of the 1950s, obsessed with the Establishment Clause to the neglect of the Free Exercise Clause. What is the difference?

1. Several federal circuit courts have studied whether public high school students can meet before or after class for religious study, discussion, or prayer on the same basis as other student groups do for nonreligious purposes. The U.S. Supreme Court has held that where a public university has created a "limited public forum" of this kind, religious interests cannot be disadvantaged because of the content of their speech. Two circuit courts have ruled that the same principle does not apply at the high school level, and the Supreme Court has declined to rule in these cases. A third case has now arisen in Pennsylvania, ***Bender v. Williamsport***, and it will be interesting to see which clause of the First Amendment prevails. Will sponsorship by the school of extracurricular religious activities be seen as establishment of religion? Or will the court really focus on the religious liberty rights of the students?

2. Minnesota had enacted a law permitting parents who incur expenses for their children's education to deduct a limited amount of those expenses from their state income tax. This arrangement was challenged by the Minnesota Civil Liberties Union on the ground that it was an establishment of religion. But the federal district court, circuit court, and Supreme Court all found that it was not an establishment of religion, since it included expenses of public as well as private religion. No tax money was paid to parochial schools, and parents acted as a buffer between the government and the schools benefiting from the tax deduction.

This decision, ***Mueller v. Allen***, allows room for the free exercise of religion without significantly increasing the danger of establishment. Few, if any, parents are going to send their children to parochial school strictly because of the limited relief provided by this deductibility. It is also significant that the Supreme Court refused to base its decision upon the proportion of families benefited by the deduction. To send their children to parochial school was the parents' free choice and constitutionally should not turn on a head count of religious affiliations.

It seems to me that civil libertarians should encounter the danger of the moment—*government* encroachment—in this area as they have in others. They should take alarm at the growing notion that government has the duty to inspect, register, and certify religion as it does meat. They should be distressed that any citizens' group, but especially a religious one, should be expected, nay, ***required***, to register with and report to public officials if they want a tax exemption, if they want to solicit contributions from the public, or if they want to influence legislation.

These absurd requirements, supposedly designed to prevent or expose fraud or manipulation, have produced elaborate bureaucracies that demand voluminous reports from private groups (thus distracting them from their own work) and that build elaborate files that nobody looks at. And all this they do without in the least inconveniencing groups that really engage in fraud or deception, because they can readily falsify their reports with little danger of detection, since bureaucrats normally view their function as compiling forms and filing them, not using them for any ultimate purpose. And there are already laws against fraud that can be used against those who are defrauding. So 99 percent of law-abiding groups are burdened with onerous and unnecessary and pernicious reportage without unduly deterring the one percent of miscreants the system was designed to catch!

I call it pernicious, above and beyond its bother and futility, because it encourages in the executive branch, the legislative, and even the judicial, as well as in the public at large, the notion that it is appropriate, prudent, even necessary, for the government to ride herd on these groups to prevent supposed dangers of fraud and sharp practice, which, of course, it doesn't.

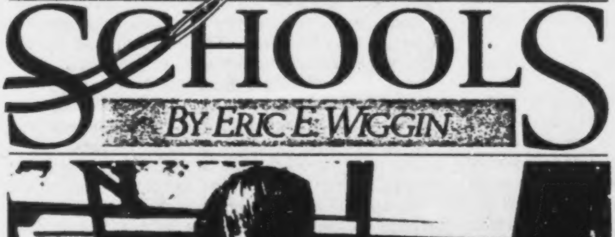
Hanky-Panky: The Price We Pay

But what if government didn't do all this inspection and regulation? What unimaginable evils might befall? Think of the scandals of the Pallottine Fathers, the Cardinal Archbishop of Chicago, Jonestown, and all that! But a moment's reflection might remind us that, notorious as they were, and even if as bad as alleged to be, such scandals comprise a tiny fraction of total religious activities.

The Founders knew when they wrote the First Amendment that some hanky-panky might go on in the name of religion. That is the price of freedom. But they were willing to pay that price and take that risk. Are we less confident in the importance of freedom than they?

HOME-SPUN SCHOOLS

BY ERIC E WIGGIN



Maxine Carle's home school spreads across the kitchen and family room of her rural Maine home. Four-year-old Bonny kneels by the patio doors practicing letters from the alphabet. "'God made Adam and Eve,'" reads Joshua, age 6, from his primer *We Learn About God*. Wind and rain tear at trees in the nearby forest as Heather, 9; Holly, 12; and Jamie, 14, work on their studies at battered school desks. Heidi, 16, and 17-year-old Bryan, who is a high school senior, work at Latin and social studies in their mom's Christian Liberty Academy's Satellite School.

Mrs. Carle moves efficiently from child to child, giving help as needed. Between the refrigerator and the sink a tawny Siamese cat nurses six kittens.

The Carle children seem unsurprised that their mother (who at 45 has two grandchildren) is able to assist in their daily learning activities. Maxine Carle finished first in her 20-student high school graduating class 27 years ago. Subsequently she took nurse's training and received her R.N. Now she reads voraciously to keep ahead of her family of students.

Stuart Carle, a self-employed tractor-trailer driver, uses knowledge gained in a Marine Corps electronics course to tutor his children in math and science. Both parents find the Christian Liberty Academy instructional aids self-explanatory. The youngsters, Maxine says, "have had plenty of time to finish their work" each of the more than two years they've studied at home.

Says Bryan, "Half the time in high school English class you can't get help. You wait until it's too late, then flunk the test."

Bryan spent a year at a high school in a neighboring community, where he was "flunking English." Now, after two years in the A Beka (Pensacola) series Christian English textbooks, he expects to graduate in the spring and enter Valley Forge Christian College. Both mother and son affirm that in public school Bryan's English textbooks were seldom used, and that class time was spent on drama and mythology.

The Carle children are among 250 youngsters studying at home in Maine—about double those in home schools one year ago. Four years ago, according to Wallace LaFountain, the Maine Department of Education's curriculum consultant, only one child was taught at home with state approval. About 50 of the home students now, says LaFountain, are in state-approved Calvert or Pensacola Christian school correspondence programs. Another 200 are enrolled in Christian Liberty Acad-

PHOTOGRAPHS PROVIDED BY AUTHOR

emy's Satellite School program (CLASS)—originating in Prospect Heights, Illinois—and an unknown number have designed their own programs. Most home-schoolers are, in LaFountain's words, "flouting the law," since CLASS does not seek state approval.

Paul Lindstrom, Christian Liberty's superintendent, says that CLASS now has 3,650 families with 7,000 youngsters in the program nationwide, an increase of 61 percent in one year. Dr. Raymond Moore, of the Hewitt Foundation, says his organization has 15,000 home-schoolers listed in its files. Moore estimates that at least 250,000 youngsters nationwide study at home. His figure is based on known local home schools and is extrapolated into the national school-age population.

"Home schooling is a stabilizing effect" in my children's lives, Mrs. Carle says, explaining her reasons for taking the five older youngsters still at home out of the public schools nearly three years ago. In public school, she remarked, "Mother tells them one thing, and the teacher another. Who do the children believe?" Mrs. Carle told of an elementary teacher whose lifestyle, she feels, is leading older girls astray. But though parents have complained to the public school authorities, nothing can be done to correct the after-hours behavior of this popular schoolteacher.

"We have a Christian heritage that is important to us," says Maxine Carle. "Our children don't get that heritage in school." Her husband, Stuart, agrees. "God is taken away from our children" in the public schools, he told the Rockland *Courier-Gazette*. "Our children are getting taught to do their own thing."

Like several parents interviewed by LIBERTY, a relatively minor but frustrating incident, coupled with learning of the availability of home schooling, precipitated the Carles' pulling their three elementary-aged and two high-school-aged children out of public school in 1981. Jamie, then in grade 7, was behind in his math, and his mother went to see the principal to try to correct the situation. Though the principal treated her cordially, she got nowhere in trying to get Jamie the help he needed.

About that time the Carles went to hear a mother talk on Christian Liberty Academy. This was "exactly the thing" we wanted, Maxine Carle remembers. It sounded "so positive." They enrolled the children in CLASS at once. Bonny and Joshua, now also in the program, have never been to school outside their home.

Jamie's Iowa Tests of Basic Skills for that first year seem to confirm the wisdom of his parents' decision. On national norms, his arithmetic skills stood at grade level 6.2 when he entered CLASS in grade 7 in late fall, and at grade level 6.8 in the spring. But vocabulary and composition areas zoomed from grade level 7.3 to 10.2, and his language skills sprouted from grade level 6.6 to 9.7 in the same period. The other Carle children have shown similar gains.

Public school superintendent William Sternberg, of Rockland, Maine, does not make a case for the academic superiority [illegible] public school over home instruction. But he argues that group schooling, whether public, private, or parochial, supplies necessary "socialization," "social contacts," or "social development." No opportunity [illegible] parent can provide, claims Sternberg, "[illegible] equal to one hundred and twenty-five 8- to 13-year-olds lumped together in one setting five and three-quarter hours a day," affording many "spontaneous experiences" not possible at home.

But a Maine father, who chooses not to be identified for fear of harrassment, strongly disagrees. "We were brainwashed," he said of his experience with his two junior-highers now in their fourth year of home schooling, "into thinking our children had to be in school for their social development." He and his wife say that the youngsters have social contact with other children five days a week, including church and youth activities two or three times weekly.

The Carles likewise feel that their children get adequate social contact. The three older youngsters are now spending at least one day a week hammering nails or painting with the volunteer crew at their Baptist church's new sanctuary-classroom-gymnasium complex. When not working, they are playing basketball with other teens in the church's new gym. The entire family attends some church activity several times a week.

Paul Lindstrom reports that very few of his parents have encountered legal harrassment, though many states do mandate official supervision of home schools—a practice that CLASS avoids simply by not reporting to authorities. The Carles, for example, have refused to permit public school personnel to supervise their school. Though the local superintendent has referred the matter to the state attorney general, no word has been heard from that office in the two years since. Lindstrom says that about 100 of some 2,600 CLASS families were threatened during the 1982-1983 school year. Only three, in Texas, came to court (all were won by CLASS). Lindstrom concedes that several cases were lost in Nebraska three years ago.

REJECTED
NO

Gerald and Gloria DeNicola, of New-p[illegible] Maine, have been prosecuted two [illegible] for using the Calvert and [illegible] programs to educate their [illegible] foul language, [illegible] and lack of pers[illegible] the DeNicolas [illegible] 15 out [illegible] two years ago. Last year they [illegible] old G[illegible] home [illegible] what [illegible] Christian principles. The DeNi[illegible] Christians who worship at h[illegible] on [illegible] evenings with two other families.

[illegible] instructional material has [illegible] Maine Department of Education's approval for home use—provided parents [illegible]dles such as demonstrating they are "qualified" to teach—the DeNicolas were refused permission by their local board to educate at home. They then applied directly to the state for approval, but in the interim, district superintendent Hartland Cushman had the DeNicolas hauled into court on truancy charges. The judge dismissed the case because the state had by then overruled Cushman's local board. Cushman has even more aggressively pursued the DeNicolas this school year by tying up their home-school application at the local level, preventing direct appeal to the state. Cushman has again had the DeNicolas arrested, and the judge is trying to mediate.

Esther White, Dixfield, Maine, is a Seventh-day Adventist who has chosen home instruction for her youngsters, several of whom are now in high school. She says, "If I had to give one qualification for my ability to teach my children, I would have to answer that it is that I am their mother." Though she wrote as part of a formal application for home schooling in which she intends to design a program around Rod and Staff (Mennonite) curricula, her reasons express the feelings of many home-school parents: The government has no right, either from a constitutional or Biblical position, to insist on monitoring a parents' home-education program beyond the restraints of ordinary child-abuse laws.

Dr. Raymond Moore supports the right and the advisibility of parents such as the Carles, the DeNicolas, and the Whites to teach at home. "If a parent can read and write, speak clearly," and keeps a "systematic house," then home schooling may be the best course, he said. In fact, it is a "slap in the parent's face to suggest that the State [can] out-parent most fathers and

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Eric E. Wiggin is a full-time free-lance writer in Rockland, Maine.

mothers. . . . Most parents have at least enough [knowledge] to satisfy State standards'' in the basics, Moore wrote in *Homespun Schools*.

Mike McHugh, administrator for admissions and curriculum development at Christian Liberty Academy, observes that the Bill of Rights would have been entitled the Bill of Privileges had the Founding Fathers envisioned a parent having to ask the state's permission to teach his own children.

But ''we can't use our energy battling the courts on constitutional grounds,'' explained Gloria DeNicola. Ironically, their concern for legality has backfired into a courtroom hassle—while most who have quietly gone about home-educating without reporting have eventually been overlooked or lost in the system.

Public school superintendents ''who know what they're doing will look the other way'' to parents teaching at home, Dr. Moore told LIBERTY. The ''spirit of the law,'' that parents have prior rights given by God, versus the ''letter of the law,'' says Moore, is the core of the legal issue. He notes that ''the U.S. Supreme Court has stated that a parent has a prior right to educate his children.'' Moore is the nation's leading Christian home-school advocate. With his wife, Dorothy, he has authored *Home Grown Kids*, *Homespun Schools*, and other books on education and parenting.

Dr. Moore advances several arguments for home schooling. The ''ability of a child to explore freely'' is restricted in a group-school environment, he says. This exploring facet is recognized by Maine home-schooling parents, most of whom regularly provide extra activities such as field trips to university libraries, radio stations, industries, and museums.

Also, Moore maintains that a child taught by his parents has ''literally hundreds of responses'' daily from the parent-instructor ''not possible in a group situation'' where the teacher has a large class.

Dr. Moore scorns the public educators' notions of socialization. Citing the ''singular adult example'' of parents, Moore noted that the loss of self-worth, a lack of respect for parents, loss of personal optimism, and loss of trust in one's peers results from the typical public school ''socialization.'' In *Homespun Schools*, Moore concludes: ''The child who works and eats and plays and has his rest and is read to daily, more with his parents than with his peers, . . . is the one who has a sense of self-worth. . . . He becomes a social leader. . . . He largely avoids the dismal pitfalls and social cancer of peer dependency. He is the productive citizen our nation badly needs.''

Dr. Moore's books are steeped in Biblical principle. He readily affirms that many of his ideas on schooling came from a study of the Bible and the culture of ancient Israel. Deuteronomy 6:7, he said, is central to his beliefs about home schooling: ''And thou [fathers] shalt teach them [God's precepts] diligently unto thy children.''

Should Christian Schools Have State-Certified Teachers?

YES

A prosecuting attorney defends state laws requiring all private school teachers to be state certified.

By James M. Vukelic

Every state requires that parents educate their children by sending them to public schools, private schools, or by means of home study. To assure that students are receiving an adequate education, the legislatures in 47 states have mandated that schoolteachers be state certified. Generally, grade school teachers are required to have a four-year college degree in elementary education; high school teachers must have a degree in secondary education and must have taken several courses in the subject area (for example: history, math) they intend to teach.

While the majority of states exempt private schools from the necessity of hiring state-certified teachers, at least 11 do not. In these 11 states, parents face criminal prosecution if they fail to enroll their children in schools that employ state-certified teachers. Although no parent has been imprisoned for sending children to a Christian school employing uncertified teachers, one school and its administrator gained national attention when Nebraska jailed Pastor Everett Sileven, of Louisville, for refusing to obey a court order closing Faith Baptist school. In North Dakota, parents have been fined from $10 to $400 each for violating that state's compulsory attendance law.

The arguments against hiring state-certified teachers are two: (1) to hire state-certified teachers is to submit to state control over a duty that the Bible mandates to parents, and (2) hiring state-certified teachers does not assure good education and may be harmful to a child's moral upbringing.

God Before State

The apostle Paul charges parents to bring up their children "in the discipline and instruction of the Lord" (Ephesians 6:4, R.S.V.).* For many Christian parents this counsel means more than to take their children to Sunday school once a week. Some parents, believing it would be sinful to send their children to public school, send them instead to parochial schools or teach them at home. In the past decade we have seen a large increase in the number of private schools.

Conflict develops when the state attempts to regulate these private schools in the same manner in which it regulates public schools. Generally the state prescribes a minimum curriculum; sets the minimum number of school days; establishes health, fire, and safety standards; and requires all teachers to be state certified. Some pastors object to these regulations. "The state doesn't own children; parents do!" they insist. (See "'*Faith' Versus Nebraska*," LIBERTY, May-June, 1983.)

Ironically, the same pastors crying Foul when the state attempts to exercise minimal control over the education of its citizens are, along with doctors, lawyers, and Christian colleges subject to regulation through licensing. No one can convincingly argue that the state does not have a compelling interest in assuring that its citizens are educated sufficiently to become functional, productive members of society. The "state" is us, all of us. We elect and delegate authority to our representatives who pass the laws and regulations under which we live. The people of a state have the right, indeed the obligation, to educate their young.

It is no answer to say, "My school is part of my church; therefore you cannot control it in any way, shape, or form." The United States Supreme Court has distinguished right to *believe* from right to *act* upon belief. The first is protected by law; the second may not be. In one case, members of the Neo-American Church sought exemption from federal drug laws by claiming the drug laws infringe on their freedom of religion. The nation's Highest Court accepted the church members' right to believe what they wanted but upheld the authority of the state to control their drug activity.

It seems hypocritical to say, "We will submit to state control over health, fire, and safety standards; the length of the school year; and the minimal curriculum requirements; but not to the certified-teacher edict." If it is sinful to submit to the state on one requirement, it should be no less sinful to submit on the others. Some skeptics have noted that it costs little to comply with the state regulations—except for the teacher certification requirement. Since certified teachers have at least a college degree, they

James M. Vukelic, a former public schoolteacher and guidance counselor, is the prosecuting attorney for Hettinger County, North Dakota.

may not be satisfied with the salary a nonprofessional would accept. Most states require that a high school teacher must have a major or minor in each subject taught. Since a private high school must offer a variety of subjects, it must hire several teachers. Many fledgling private schools have small enrollments, making it economically unfeasible to hire more than one or two teachers. Is this the real reason for rejecting the certified-teacher requirement?

Certified Teachers Do Not Assure Good Education

Most education experts agree that employing certified teachers will not necessarily assure students a quality education. Some fundamentalists have taken the argument one step further: hiring state-certified teachers would have a damaging effect on church school education. Certified teachers are exposed to secular humanism in college.

The supposition is erroneous for two reasons. First, exposure to secular humanism no more makes one a secular humanist than reading *Mein Kampf* makes one a Nazi, or studying Spanish makes one a Spaniard. Second, thousands of graduates of private religious colleges presumably have not been "infected" by secular humanism and are as certifiable as any graduate from a state college.

More troublesome is the argument that the states should drop the teacher certification requirement and instead use standard achievement tests to see whether students are being well educated. At first blush, this alternative seems reasonable, but it suffers from several inadequacies. The first deals with sanctions, what is to be done if some students, or most of them, score poorly on the tests. Should the school be closed? Is the teacher who taught those students who scored poorly to be reprimanded? fired? required to take additional course work in the subject area where the students demonstrated inadequacy? How does this help students who have already suffered at the hands of the poor teacher?

Perhaps the poor test scores are not the teacher's fault at all, but that of lazy students or uncaring parents. Undoubtedly some students in every class score higher than the norm. Should the class average be used to determine teacher effectiveness? How reliable an indicator of teacher quality is a class average, particularly where the class is small or made up primarily of children from white upper-middle-class homes? Since most of a child's time is spent in the home, is it safe to assume that above-average test scores are brought about by great schoolteachers?

A second and more serious problem with testing involves state control over the content of educational courses. Currently most states mandate a number of subject areas—such as English, science, math—that each school must offer. However, no attempt is made to control the specific material that must be taught. A standardized test covering biology might penalize students who give "wrong" answers to questions on evolution. The very religious freedom parents seek in establishing a church school could be stripped from them by using standardized tests rather than teacher certification to ensure quality education. Ironically, often the people who claim that employing certified teachers is tantamount to placing the state above God propose testing as an alternative.

If a teacher's job depends on his students testing well, or if a school's remaining open depends upon good test scores, teacher and administrator alike are going to have an undesirable stake in the outcome. While most teachers would not be so unscrupulous as to consciously "teach to the test," it is difficult to believe that they wouldn't be affected by the pressure of administrators, parents, fellow teachers, students, and others involved in the schools' existence.

It is not enough to show why some alternative to certifying teachers, such as standardized testing, is unsound as a means of assuring quality education. There must be logical reasons for certification in the first place. One is the role of the "tutor" in the church school.

Many private schools are using the Accelerated Christian Education curriculum, whereby students advance at their own speed by completing programmed materials. The role of tutor is significantly different from the traditional role of teacher. It is difficult to imagine that one tutor is competent to answer questions dealing with English, chemistry, music, history, geometry, and other subjects covered by the programmed materials. The result is that the student gets cheated when a tutor lacks competence. As the adage has it, you get what you pay for. If we demand that doctors have several years of college training and pass rigorous examinations before we allow them to treat our children's bodies, what folly it is to entrust our children's minds to people who have not chosen education as their career or mission and taken the time to learn their art before practicing it.

No, the state does not own children, but neither do parents. We are but shepherds obligated to do the best we can in rearing our children. We do them a great injustice when we indulge incompetent teachers. While teacher certification may not be foolproof in guarding against incompetence, it is far better and less intrusive than any alternative proposed to date.

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* The Scripture quotation marked R.S.V. in this article is from the Revised Standard Version of the Bible, copyrighted 1946, 1952 © 1971, 1973.

NO

An attorney for the Christian Legal Society argues that state certification of teachers does not guarantee quality education. It only ensures state control.

BY SAMUEL E. ERICSSON

Samuel E. Ericsson, a Harvard law graduate, is director of the Center for Law and Religious Freedom, at the Christian Legal Society.

Education has become a major social and political issue in America. We all want quality education for our children. The big question is Who defines quality? Ultimately, the focus is on teacher effectiveness in the classroom and who should evaluate the teacher's ability to teach.

Although many public school systems are doing an excellent job in their communities, in some urban areas the results are mediocre and often tragic. "If an unfriendly foreign power had attempted to impose on America the mediocre educational performance that exists today, we might well have viewed it [illegible] act of war." So concludes the President's National Commission on Excel-[illegible] in Education in its 1983 report, *A Nation at Risk*.

A Nation at Risk was part of a tidal wave of criticism about government-run educational programs.[1] In many test areas it was proved dangerous for a child's physical, moral, and educational health to attend the local government-run school.

But beware of placing your children in an educational environment that is not state-controlled. Amish, Mennonite, Fundamentalist, and Evangelical parents have found it dangerous to provide education separate from government-run programs. In 15 states, educational agencies have dragged parents and church-operated schools into court to defend their right to separate education. Increasingly, parents choose jail rather than submit their children to the state's definition of quality.

In late 1983, seven Nebraska fathers were jailed allegedly for violating the state truancy laws.[2] There was no evidence that their children were not receiving quality education or that they were truant from the school of their choice. Rather, their teachers were not certified.

In contrast, truancy is epidemic in many urban schools. Yet few, if any, parents have spent a day in jail for failing to see that their children attend class. This is a tragic double standard.

The State Has the Monopoly

Of the 40 million school-age children in our country, 90 percent attend public schools, and another 9 percent private schools that submit to state licensing, accreditation, and teacher-certification standards. The remaining one percent are educated either at home or in schools that refuse to submit, on religious or constitutional grounds, to state control.

State certification of Christian school teachers has little to do with the state's desire for quality education. State educators want to make private education another branch of public education, paid for by the private sector and run by the government. The real issue in mandatory state certification is the right of parents to choose the educational environment for their children. State educators are not satisfied with directing the education of 99 percent of our children. They want a monopoly—100 percent control!

Educational Freedom Is a Constitutional Right

The freedom of parents and churches to found and control educational ministries for their children is a basic constitutional right.[3] The Supreme Court has testified to the role religious schools play in our society.[4]

Such schools absorb a substantial financial burden that would otherwise have to be carried by taxpayers. Currently, to educate a child in the public schools costs about $4,000 a year per student.[5] Conservatively, Christian schools that refuse state control of their programs save the taxpayers nearly $2 billion.

Public schools are crying for more funds. Yet they appear to have unlimited resources to fight the right of parents and Christian schools to provide alternative education. Primary in their attack is state certification of the teachers in Christian schools.

Absolute Separation: A Straw Man

With few exceptions, Christian schools adhere to state regulations on building codes, and health, fire, and safety standards.[6] Rarely does a Christian school refuse to comply with state school attendance standards.[7] Never has a Christian school challenged state requirements on English, mathematics, civics, history, and geography.[8]

Christian schools generally recognize that the state has legitimate authority in certain areas. Those who argue that the schools want "absolute separation" are building a straw man. The real conflict begins when the state surpasses the areas of attendance, building codes, health, fire, and safety, and seeks to impose subjective criteria on teaching methodology or competence.

State Certification Is no Guarantee of Quality

Education experts agree that state certification of teachers will not guarantee quality education.[9] The theory is that state certification weeds out incompetence. But state-mandated teacher certification is about as effective as using a bulldozer to weed the family garden. State certification ensures only state control.

Recently, Mary Futrell, president of the largest national teachers' union, the National Education Association (NEA), voiced opposition to any teacher test that could result in denied employment. Futrell said, "No single test can judge whether a teacher can teach."[10]

In November, 1983, the nation's leading testing service, the Educational Testing Service, announced a ban on its national teacher examination.[11] The action by ETS renounced the use of tests to measure the competence of practicing teachers in public schools. According to ETS president Gregory R. Anrig, "We do not require practicing lawyers to retake bar examinations, nor do we require . . . practicing physicians to retake the state medical examination."[12]

Thomas Toch, associate editor of *Education Week*, wrote: "In spite of recent talk of merit pay and 'career ladders,' the solution chosen by the greatest number of states has been to deny teaching licenses to anyone who cannot pass the test of basic English and math skills. While the idea sounds reasonable enough, a close look at these so-called 'competency tests' shows that, in fact, they cannot be a cure-all."[13]

In California, the state exam for teacher certification tests basic math skills—addition, subtraction, percentages, fractions, and geometric shapes. Only one third of the math section deals with algebra and geometry. To pass, 26 of 40 answers must be correct.[14]

Nevertheless, 32 percent of all prospective teachers who take the state exam fail. The majority of these teachers are graduates of secular colleges. Moreover, 43 percent of the already state-certified teachers also fail. As a result, California has dropped the requirement that practicing teachers pass the exam in order to be licensed to teach new subjects.[15]

In Florida, to dramatize the low standards of their state exam, the principal of the Hebrew Day School gave sample math and reading questions to a random group of sixth-graders. Eight of eight students passed the reading tests, and seven of eight passed in math. Almost one in five of Florida's prospective teachers, all graduates of state-accredited secular teachers' colleges or universities, failed the test.[16]

Fixing Something That Is Not Broken

In contrast to the crisis in public education, no shortcomings are cited in the quality of private education. American private schools, both religious and nonsectarian, have a longstanding reputation for doing a fine job. According to noted constitutional lawyer William Bentley Bail, no court case has shown that a private school's performance fell below the average public school in the surrounding community.[17]

In 1983, 11,000 students in 66 Christian schools in Maryland who took the California Achievement Test scored 25 percent higher than the national public school average on the same test.[18] The Christian schools participating in the testing program ranged in size from fewer than 100 to more than 1,000 students. Roger L. Salomon, executive director of the Maryland Association of Christian Schools, says: "Some people have the opinion that because we don't have tremendous physical plants, huge budgets, and all the extras, we don't do a good job. We wanted to show the public that, even in a one-room school, you can provide a good education."[19]

How to Protect Our Children

If state education agencies are not given a monopoly in certifying all teachers in all schools, public and private, what protection do parents, the public, and children have against shoddy education or fly-by-night schools?

The most effective way of holding Christian schools accountable is the parents' freedom of choice. In *Free to Choose*, Nobel prize economist Milton Friedman affirms the parents' ability to choose well.[20] The monthly tuition bill is a strong incentive for parents to make certain their children are receiving a quality education.

I have both of my children in a Christian school. Each month, the $280 tuition is a reminder that education is not free. If I felt that a teacher were not providing the quality for which I was paying, I would discuss the matter with the principal. It would not take many complaints from parents to get results.

As a corollary to the operations of the "free market" where parents remove their children from private schools if they are unsatisfied, principals in Christian schools have greater flexibility with respect to teachers. In public schools the rule is "once tenured, always tenured." It is difficult for school boards and administrators to remove a certified, tenured, but incompetent teacher. But tenure generally does not exist in the private school. Thus, an incompetent teacher can be replaced.

Parents in Christian schools have greater opportunity to evaluate the teachers. Most Christian schools are affiliated with a church, and often the teachers attend the same church the students and their parents do. The parents are thereby able to evaluate the teacher on personality, values, manners, and character.

Most Christian schools affiliate with some association of Christian schools. Groups such as the Association of Christian Schools International, with more than 2,000 Christian school members, have established their own accreditation and certification standards. There is no basis for suggesting that the state can do a better job in evaluating these schools than a private association.

Criminal and other existing laws offer much protection to the public. These include laws against fraud, embezzlement, false solicitation, and child abuse, and also laws on fire, safety, and sanitation.

Standardized achievement tests for student competency can be used. Although such testing has its critics, it can identify serious problem areas.

The Real Issue: Educational Freedom or Despotism?

Many parents do not presume that the state is the sole or superior educator. Benjamin Disraeli, English prime minister, observed in 1839 that the attempt to place all English education in the hands of the governmental bureaucracy was undesirable because "all children would be thrown into the same mint and all would come out with the same impress superscription."[21]

A few years later John Stuart Mill, English intellectual, wrote that state-sponsored education "is a mere contrivance for molding people to be exactly like one another: and as the mold in which it casts them is that which pleases the predominant power in the government, whether this be a monarch, a priesthood, an aristocracy, or the majority of the existing generation, in proportion as it is efficient and successful, it establishes a despotism over the mind."[22]

The most effective check against an established "despotism over the mind" in America today is the allowance for a truly pluralistic educational system where parents, rather than the state, are permitted to evaluate what is best for their children.

Footnotes

[1] *National Assessment of Education Progress* (1982); J. S. Coleman, et al., *High School Achievement: Public, Catholic, and Private Schools Compared* (1982); T. M. Black, *Straight Talk About American Education* (1982); Paul Copperman, *The Literacy Hoax* (1978); R. B. Everhart, ed., *The Public School Monopoly* (1982); Richard Mitchell, *The Graves of Academe* (1981); C. E. Silberman, *Crisis in the Classroom* (1970); Frank Armbruster and Paul Bracken, *Our Children's Crippled Future* (1977); S. L. Blumenfeld, *Why America Still Has a Reading Problem* (1975); Russell Kirk, *Decadence and Renewal in the Higher Learning* (1978); John I. Goodlad, *A Place Called School* (1983).

[2] "Jailings in Nebraska School Case Turn Church-State Separation Into Chasm," Washington *Post*, Dec. 3, 1983, p. A3.

[3] *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

[4] *Board of Education v. Allen*, 392 U.S. 236 (1968).

[5] "More Money, Staff, Change Little for Average Students," Washington *Post*, Dec. 4, 1983, p. A1.

[6] Testimony of William Bentley Bali at hearing before U.S. Senate Committee on Labor and Human Resources on Governance in Education, Oct. 18, 1983.

[7] *Ibid.*

[8] *Ibid.*

[9] Thomas Toch, "Putting Teachers to the Test," Education Review, Washington *Post*, Nov. 20, 1983, p. 5; "Use of Teachers' Tests Curbed," Washington *Post*, Nov. 23, 1983, p. A12.

[10] Education Review, Washington *Post*, Nov. 20, 1983, p. 7.

[11] "Use of Teachers' Tests Curbed," Washington *Post*, Nov. 23, 1983, p. A12.

[12] *Ibid.*

[13] Toch, *loc. cit.*

[14] *Ibid.*

[15] *Ibid.*

[16] *Ibid.*

[17] See Testimony of William Bentley Ball, *supra*.

[18] Cathy Mentzer, "Students at Christian Schools Score Above Average on Achievement Tests," *Herald-Mail*, Hagerstown, Md., Dec. 10, 1983, p. A3.

[19] *Ibid.*

[20] Milton Friedman and Rose Friedman, *Free to Choose* (1981).

[21] Moneypenny and Buckle, *II Disraeli*, pp. 62, 63; and see generally S. Arons, *Compelling Belief: The Culture of American Schooling* (1983).

[22] John Stuart Mill, *On Liberty*, p. 158.

GOVERNMENT REGULATION

The OPPRESSOR

By Pat Becar[illegible]

A district attorney with a conscience shares his thoughts on putting children in a foster home because of their parents' religious beliefs.

Much has been written in LIBERTY about the plight of those oppressed because of their religious beliefs. How about a word from an "oppressor"?

I am a district attorney for a rural Midwestern municipality. In spring, 1981, the administration of our school district informed me that Marie Engst, age 11, and her brother Able, age 6, had been absent from school for two weeks. Contacts with the parents, Martin Luther Engst and Ruth Engst, revealed that they were keeping their children at home because they disapproved of some classes and activities their children were participating in at school.

Our state has a compulsory education law. It provides that all children between 6 and 16 must attend a school, taught by qualified teachers, at least 175 days a year. Children physically unable to attend school are exempt.

If a student is absent without excuse, the superintendent of the school notifies the parents, and if the situation is not remedied, he notifies the district attorney. The district attorney may issue a warrant for the arrest of the parents and prosecute them for violating the compulsory education law, issue a petition claiming the children are delinquent because of truancy, or issue a petition claiming that the children are neglected because they are not being provided necessary education, since the parents neglect or refuse to provide it.

I wasn't enthralled with claiming that Martin and Ruth Engst were neglecting their children, but I am required to enforce the state's compulsory education law and child protection laws. I decided that a truancy petition was the least offensive. It was filed and a hearing date set.

On the appointed day the Engsts, with Marie and Able and a younger son, Peter, arrived in court. The children were neat, clean, and well dressed. They seemed to have an excellent relationship with their parents.

Martin was called to the stand. During his testimony, he objected to his daughter's being forced to participate in unfeminine sports, and in teaching concerning the Statue of Liberty ("I think it was to mock us that a woman can be in control and can judge what is justice"), health ("Health is a field that you must bring God in and tell us first of all that a sound body is from God and sickness is because of sin and the curse"), and evolution ("Everybody knows in their hearts that there is Creation, but they have to fight God's Word, so they make and force us to take on evolution, which is written in your heart that there is no such thing as evolution").

When asked whether he was a member of any religious organization, Engst responded, "Well, I hold the Christian church which is indivisible, hold it to be the truth, but none that carries the name of like Methodist or Lutheran or Catholic, no."

Engst admitted that his children had not attended school for more than a month, but he told the judge that he would send his children to school the next day.

A month later we were back in court. The school had contacted me to report that Marie Engst was refusing to participate in physical education, health, and science classes.

Engst asked the Court for permission to speak. "I feel most strongly that our children, not just our children, all children throughout the United States, are being forced to deny Christ, to deny God."

The judge lectured Engst on the separation of church and state. "The religious education of your children can be taken care

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Pat Becarma is a pseudonym for a prosecuting attorney in a rural Midwestern municipality. The case described in this article is still pending in court, so all persons have been provided with pseudonyms.

ILLUSTRATION BY JEFF DEVER

of by the church without interference from the government. But the two have to be kept separate. There are people who may not believe the same way that you do that shouldn't be subjected to your beliefs any more than you ought to be subjected to theirs."

"Where's our religious freedom that we're supposed to be guaranteed?" replied Martin Engst. "School interferes with our religious beliefs. God's Word is God's Word. When you kick God out of the schools, you're saying, 'God, You get out of here,' and He made the world! We have a pagan government."

The judge concluded by telling Martin Engst that if he didn't allow his children to participate in their classes, I, as district attorney, could press for a finding of parental neglect and remove the children from their home. I didn't relish the idea.

Eleven months later we were back in court again. The children had been kept home from school again for 15 days. Prior to the absences, the children had refused to do health assignments, some science projects, and storytelling. The judge, finding the Engst children were neglected because their parents were keeping them out of school, said, "I can't permit your sense of what love is and what love should be to result in depriving these kids of going to school."

Engst, however, was adamant. "We are not objecting to our children going to school if the school would let our children participate in the things we see fit. It says it's better to obey God rather than man. They wanted the apostles to quit preaching about Christ too."

The judge told the Engsts that if the children were not in school, fully participating, they would be taken from their home and placed in foster care. With that, the judge adjourned the hearing.

Nine days later we were back in court. The Engsts, however, refused to attend this hearing. The court transferred legal custody of the Engst children to the welfare department. The sheriff placed the children in a foster home in a neighboring town. They attended school there and were returned to their parents' home for summer vacation.

As the next school year approached I hoped that the Engsts had decided to send their children to the local school and give them their religious training at home rather than losing them again to a foster home. My hopes were not fulfilled, late in September we were back in court.

Engst told the court, "This has come to a point where you either pull out of the system or you take the sin on. What we are holding onto is the Christian doctrine justification by faith. You are justified in God's eyes by believing in His Son, Jesus. Now our school stealthily gets us and our children on works which oppose the one work that saves us: the work that Christ did for us on the cross.

"Our schools teach lies concerning evolution, and everything that the Bible says has to go down the tube, but everything that our scientists say, that gets put up on a pedestal. Our schools can't teach nothing decent. All our schoolteachers are leeches and willing tools for the devil to push these lies down our children's throats. It's a rotten system, and that's that. I have nothing good to say about our government. Unless there's repentance, the whole works is going to be destroyed just like Sodom and Gomorrah."

The judge asked, "So the long and the short of it is you want your children to receive no other education other than what you and your wife can give."

"The problem is," Engst responded, "we'd like them to have an education. But the problem is, they're not getting an education in our school system. And I tell you, I don't hold there are any acceptable parochial schools. That looks very arrogant on our part, but I cannot condone any of our churches, Catholic, Lutheran, or whatever. There's not one decent God-fearing creature in this city, this county, or this state. If there was one, they'd string him up."

"So there is no church or no school within this state with which you can live compatibly, is that right?" asked the judge.

"Not under the doctrine of justification by faith," replied Martin Engst. "They are all on works. We're all guilty of not keeping God as our one true God, but that we condone it and sanction it, and our government backs it up with all its might. Therefore, we have an ungodly government."

"You kind of put me in a box," said the judge.

"Well, I'll tell you, I didn't put you there. I can't change the Word of God," replied Engst.

"Well, Mr. Engst," the judge said, "the children, under the laws of this state, must receive an education. I appreciate your concerns and I think you might be right in certain areas. If you cannot find a school which shares your beliefs, the court would have to place them in a foster home so they could attend public school."

"Your Honor," replied Engst, "we cannot willingly give them over. We want them to be taken from us. We don't want to take the sin on. We do want our children to have an education. And yet we don't want to have the children stripped from our home, because to me it seems quite cruel. But I know we can't eat the cake and have it too. Therefore, I would like God to run your mind and tell us what we should do. If we have your covering in God's eyes, gladly they can go. But if we don't, then it's going to be a problem."

Since the court hearing the Engst children have been in foster care and attending public school. Marie is in fifth grade, Able in first grade, and Peter is in kindergarten. Three times a week they call home and talk with their parents. (Since the Engsts refuse to insure their car on some religious grounds, they have no driver's licenses.)

This case has perplexed me since I first met Martin Luther Engst. I find his views on religion and education repugnant. The Engsts were, after all, depriving their children of an education. There was not even a lip-service attempt at education in the home. I felt sad because these innocent children were being warped by the parents' ideas.

And yet a strong bond of love exists within this family. I ask myself, Where in the Constitution does it say that a person can have freedom of religion only if he belongs to a recognized church? I can't rule out the possibility that Martin Engst is right and the rest of the world is wrong! And you can bet that if teachers were advocating the Engsts' view to their classes, I would be the first to protest and pull my children out of school. Shouldn't Martin Engst have the same privilege?

I see the Engst children from time to time at their school. I don't recall ever seeing one smile. They have been caught in a classic struggle between their parents' beliefs and the state's interest in an educated populace.

I am confused. I sometimes think Martin Engst ought to be committed. I sometimes think he is a courageous man, using passive resistance to stand up for his rights. I sometimes think his children should be put up for adoption. I sometimes think they should be returned to their family and allowed to grow up illiterate.

Soon, however, I'll have to act. Summer is coming again. Should the children be returned to their parents and go through the same trauma again next fall? Should I start the legal machinery necessary to terminate the parent-child relationship in the Engst family, and ask that the children be placed for adoption? Should we try to commit Martin and Ruth Engst as mentally ill?

I don't know. By the good Lord and the Constitution of the United States, I just don't know.

"WHERE THERE IS NO VISION"

Are Public High Schools Teaching Values

My pastor's text on a recent Sunday was "Where there is no vision, the people perish" (Proverbs 29:18). At that point he lost me. I was back in my high school assembly hall reading the same words inscribed over the podium.

"Where there is no vision, the people perish." The principal, Dr. Wetzel, hurled the challenge at both students and faculty. And it became our motivation.

That was a half century ago, but the memory and motivation remain, along with a question: Are today's students experiencing the permeating values, character development, and intellectual understanding that had their genesis in my high school? Certainly our age demands them. A Gallup poll concluded that in the United States and Europe "religious values are declining, morals also have slumped, honesty is on the wane, happiness is becoming hard to find, peace of mind is rare."

Dr. Wetzel had answers to these evils. Every day a new quotation appeared on classroom blackboards, and we discussed it. Many are still part of me:

"All that is necessary for the triumph of evil is that good men do nothing."—Edmund Burke.

"The noblest of all studies is the study of what men should be and how they should live."—Plato.

"The mind is a fire to be kindled, not a vessel to be filled."—Plutarch.

"The shortest and surest way to live with honor in the world is to be in reality what we appear to be."—Socrates.

"The child is father of the man."—William Wordsworth.

"Those who cannot remember the past are condemned to repeat it."—George Santayana.

Every day new thoughts. Through our discussion we furthered the basics of education. Reading, writing, and arithmetic were important, but they were only tools to be used, tested, and improved in furthering life's goals.

Are today's schools meeting the challenges of our age? Is the wisdom of the ages brought to bear on our problems? Have new, even more effective approaches to teaching values been developed? Or are our schools, as is said in some religious circles, failing to teach values as they did in the good old days?

Nostalgia can be deceptive. It leaves yesterday smelling of roses and lace; today, by contrast, seems characterized by funeral wreaths and stale coffee grounds. Memories of the little red schoolhouse color our perception of today's consolidated school. I would not depend on memory. I would find out for myself.

I began with a visit to my neighborhood high school and then explored others throughout the county. I was welcomed everywhere. Principals, supervisors, and teachers gave me free access to classrooms. I visited with teachers and students in cafeterias, hallways, and gymnasiums. And I learned much.

All the schools emphasized development of the whole child—character, unselfishness, thoughtfulness, the spirit of service, life purpose, and moral values, as well as educational basics. One English department, to my surprise and delight, put challenging quotations on the blackboard each day. They were not, to be sure, from the philosophers of old, but they inspired discussion and broadened thinking.

Here is one week's supply:

"No world is so perfect that it deserves to remain unchanged forever."—Dennis Gabor.

"Human life has to be dedicated to something."—Jose Ortega y Gasset.

"If the object of education is the improvement of men, then any education without values is a contradiction of terms."—Robert Hutchins.

"If one is truly alive, he believes that the world has meaning, in its whole as well as in its parts."—Paul Elmen.

"The passion of American fathers and mothers is to lift their children to higher opportunities than they themselves enjoyed."—Herbert Hoover.

Other instructional practices pleased me. When I asked one student who his English teacher was, he replied, "I have no English teacher. I have an abstract-noun specialist."

He explained: "In our literature class, whenever we strike an abstract noun our teacher's face lights up, and we must define it and explain its implications to student life, government, social contacts, and personality profiles. It's the same in class discussions."

I recounted this episode to a friend who teaches in another system. He saw nothing unusual in the abstract-noun specialist's idiosyncrasy. "A history teacher in our school," he told me, "never presents a fact in his history class without translating it, with the help of his students, into an understanding, an attitude, and, finally, an ideal."

It's true that some public school teachers eschew emphasizing values, mistakenly assuming that all values are religious in nature. But if my county's schools are typical of those across the nation, times are changing. Many teachers seem to be acknowledging the aphorism attributed to Max Lerner: "Like it or not, all education is value-drenched."

Thomas E. Robinson is professor emeritus of Rider College and president emeritus of Glassboro State College.

BY ROLAND R. HEGSTAD

DIPLOMATIC RELATIONS WITH THE VATICAN: A CAN OF WORMS

There are worms, and there are night crawlers. When the President established formal diplomatic relations with the Holy See on January 10, he opened a can that may prove to be the twentieth-century Pandora's box. A cursory grab no deeper than testimony given to a Senate committee on February 2 should give a feel of the troubles within.

Following, under headings that describe the issue addressed, are segments taken from papers presented. The speakers and their organizations are identified.

On page 21 are quotes from a speech given by Ambassador designate to the Holy See William A. Wilson at the University of San Diego on January 10. Had the American public had access to his views before the Senate hearings, his confirmation might have been in trouble. But speakers before the Subcommittee on European Affairs of the Foreign Relations Committee did not challenge his qualifications; rather they focused on the appalling dereliction of duty of the U.S. Congress and Senate in failing to hold hearings *before* the President confronted Protestant and other religious leaders with a *fait accompli*, and on constitutional, theological, and policy grounds.

The question remains, Why dip into the can of worms after formal relations with the Holy See have been established? Isn't the battle over? Yes. But we suspect that the war will go on, and that in a decade or two our children will be asking how it all happened. When and how was the First Amendment dealt a lethal blow, opening the way to renewed sectarian conflict and loss of religious freedoms in America? The excerpts on the following pages and the philosophy of William A. Wilson tell the story.

The President's regrettable action of January 10, marking as it did a significant change in American church-state relations, was not the beginning; neither was it the end. That chapter is yet to be written. We have little doubt that it will be written and read someday with anguish and regret by those who both forgot the lessons of history and little noted the words of the prophet who wrote to "shew unto his [God's] servants things which must shortly come to pass" (Revelation 1:1).

Perhaps no words can better emphasize concerns expressed before the Committee than those of British historian Lord James Bryce, who spoke in admiring terms of the unique relationship between religion and government in America:

"In examining the national government and the state governments, we have never once had occasion to advert to any ecclesiastical body or question, because with such matters government has in the United States absolutely nothing to do. Of all the differences between the Old World and the New this is perhaps the most salient. Half the wars of Europe, half the internal troubles that have vexed European states . . . have arisen from theological differences or from the rival claims of church and state. This whole vast chapter of debate and strife has remained virtually unopened in the United States. There is no Established Church. All religious bodies are absolutely equal before the law, and unrecognized by the law."—James Bryce, *The American Commonwealth*, third edition (New York: The Macmillan Co., 1895), Vol. II, p. 695.

A Wise Decision?

Senator Richard G. Lugar, Chairman, Subcommittee on European Affairs of the Foreign Relations Committee:

"I believe that the President has made a wise decision in establishing diplomatic relations with the Holy See and in nominating William Wilson to conduct those relations at an ambassadorial level."

Gaston D. Cogdell, Church of Christ:

"That the United States Senate should even contemplate opening up this 'whole vast chapter of debate and strife' as Bryce called it, is alarming. No surer way could be found to destroy the unity and cohesion of our society and nation and to polarize our people into bitterly antagonistic conflicting religiopolitical segments than to do what you gentlemen are being urged to do right now. . . .

"In time, the government's toleration of other churches may depend upon whether they behave themselves and don't become obnoxious, trouble-making bigots—meaning outspoken critics of the religiopolitical power structure. 1984 may not be the year when Orwell's baleful prophecies come to pass, but it could well be the year when the groundwork is laid for their ultimate actualization, if you gentlemen vote, in effect, to destroy church-state separation in America."

Is Opposition Based on Bigotry?

Peter M. J. Stravinskas for the Catholic League for Religious and Civil Rights:

"After all the rationalizations have been stripped away, this attitude [of opposition] amounts to nothing other than conscious or unconscious prejudice against the Catholic Church. . . . It was prejudice against the Catholic Church that disfigured our statute books with a shamefully discriminatory law that prohibited the expenditure of public funds for the maintenance of an ambassador to the Vatican. It was prejudice against the Catholic Church that thwarted the efforts of President Roosevelt and President Truman to regularize our nation's diplomatic ties with the Vatican. It was prejudice against the Catholic Church that kept odious manifestations of religious bigotry in our national law for over 100 years until Congress . . . finally acted to repeal this shameful stain on our national honor."

James M. Dunn, Executive Director of the Baptist Joint Committee on Public Affairs (BJC):

"[That] opposition to full diplomatic relations with the Holy See is an expression of anti-Catholic bigotry . . . may be true in some instances, but it is untrue and unfair to paint all opponents with the same brush. The main thrust of our opposition is support for a clear separation of church and state. We would object to the appointment of an ambassador to the Archbishop of Canterbury, who heads a worldwide Anglican Church, or to the World Council of Churches with their vast network of cooperating churches. The principle is the same in all cases: both church and state function at a higher level when they are effectively separated from each other."

Dean M. Kelley, Director for Religious and Civil Liberty, National Council of Churches (NCC):

"In the early 1950s, the issue of an ambassador to the Vatican excited a lamentable flurry of anti-Catholicism. We hope that will not be the case now, but if it is, responsibility will rest with those who precipitated the issue, not with those who object for reasons of theological and constitutional principles."

James T. Draper, President, Southern Baptist Convention (SBC):

"Anyone who claims there has not been much vocal opposition to this action either isn't listening or isn't honest.

"As president of [the Southern Baptist Convention], I have traveled over a quarter of a million miles and in almost every state in this country. . . . Contrary to popular belief, opposition to this move is geographically widespread. It is *not* limited to the Deep South. It is *not* a resurgence of anti-Catholic sentiment. It does *not* reflect any ill feeling toward Pope John Paul II. I have great admiration for the Pope and his great moral and ethical influence in the world. It is *not* a cause championed by a band of wild-eyed extremists. It *is* the real concern of millions of Americans deeply committed to our constitutional protections of religious liberty."

Straining Interfaith Relationships

Robert P. Dugan, Jr., Director, Office of Public Affairs, National Association of Evangelicals (NAE):

"No single act of the American government can so strain interfaith relationships as to favor one church over all others. As Supreme Court Justice Joseph Story said in his *Commentaries on the Constitution of the United States*, this kind of action leads to 'perpetual strife and perpetual jealousy on the subject of ecclesiastical ascendancy.' "

Robert L. Maddox, Jr., Executive Director, Americans United for Separation of Church and State (AU):

"This move accords to one church, and one church alone, a unique channel of communication to our government. Whereas every other religious group in the world will have to wait in line to have its views heard, the Roman Catholic Church can now stroll with impunity into the highest halls of government to promote its doctrines and ideals. The other religious communities are willing to compete in the marketplace to have their ideas put forth, but through this proposed action the Roman Catholic Church suddenly receives an unfair and inordinately preferential advantage in promoting its values and programs. That unequal access deeply offends our national sense of fair play.

"Because of this unfair advantage, such recognition will lead to political division along religious lines. In *Lemon v. Kurtzman*, 403 U.S. 602, 622-23 (1971), the Supreme Court noted: 'Ordinarily political debate and division, however vigorous or even partisan, are normal and healthy manifestations of our democratic system of government, but political division along religious lines was one of the principal evils against which the First Amendment was intended to protect. . . . The potential divisiveness of such conflict is a threat to the normal political process. We have an expanding array of vexing issues, local and national, domestic and international, to debate and divide on. It conflicts with our whole history and tradition to permit questions of the Religion Clauses to assume such importance in our legislatures and in our elections that they could divert attention from the myriad issues and problems that confront every level of government. The highways of church and state relationships are not likely to be one-way streets, and the Constitution's authors sought to protect religious worship from the pervasive power of government. The history of many countries attests to the hazards of religion's intruding into the political arena or of political power intruding in the legitimate and free exercise of religious belief.'

"This divisiveness along religious lines seriously threatens the harmonious fabric of our democratic society. We run the risk of unnecessarily awakening the ghosts of religious bigotry from a past that has long been laid to rest."

Cogdell, Church of Christ:

"If the internal peace and harmony of this nation mean nothing to you, then by all means vote for this confirmation of an ambassador to the Holy See, because ecumenism and community harmony between those who have deeply held and sharply divergent religious convictions is possible only when one religious group does not attempt to arrogate to itself supremacy and sovereignty over the rest, as is being attempted by one church with the help of certain politicians who are willing to sell this nation's birthright of freedom for a very small mess of pottage. . . . Remove that equality before the law which we all now possess, and tensions and frictions will surface which will divide this country in a hundred ways. . . .

"*Please*, look down the road on which you are about to take us, gentlemen: It is the road back to chaos and darkness. Do the blessings of our own experience with church-state separation and the curses of other nations' experience with a different arrangement mean nothing to us?"

John M. Swomley, Jr., Professor of Christian Ethics at St. Paul School of Theology (ACLU):

"At the moment when Protestant and other churches are proposing that the Pope's role should be chiefly that of president of an ecumenical council, the Reagan Administration, and hence the United States, would recognize the special role of the Pope and the existing religious structure and thus undercut ecumenical discussions."

Is the Appointment to a State or to a Church?

Dugan, NAE:

"In this, the year for Orwellian doublespeak, the American people are being asked to believe that the Vatican is a 'nation-state,' not unlike any other nation. But the American electorate is not so gullible that it will swallow any such rationalization, whatever its technical trappings. Americans know a red herring when they see it."

Draper, SBC:

"The *Indiana Baptist* said, Calling the Roman Catholic Church a 'state' makes as much sense as calling the Pope a Baptist. Calling a 'church' a 'state' is as much a misnomer as 'grape nuts'—neither grapes nor nuts. . . . Let the entity be called a church or a state, but not both!"

B. B. Beach, Director, Department of Public Affairs and Religious Liberty for the General Conference of Seventh-day Adventists:

"A well-known Roman Catholic historian has written: 'If there were to be an American ambassador to the Vatican, he would have to be ambassador to the Pope as Pope. This would not demand United States recognition of all the papal claims implied in the titles "Vicar of Jesus Christ, Successor to the Prince of the Apostles, Supreme Pontiff of the Universal Church," but, to speak realistically, it would mean that the United States acknowledged the fact that such claims were made, and that a reality existed to substantiate them, and that the importance of that reality, the spiritual authority of the Pope, was such that it warranted establishment of diplomatic relations.'—James J. Hennesey, S.J., 'U.S. Representative at the Vatican,' *America*, Dec. 4, 1965, p. 708."

Kelley, NCC:

"The contention that the ambassador is to be sent to the *civil* entity rather than to the religious is belied by the very title of the appointment, which is not to the state of Vatican City, but to the *Holy See*, which is an ecclesiastical entity; a 'see' is the seat of a *bishop*, and 'holy' is a quintessentially spiritual term.

"Theologically, we believe that it perpetuates the medieval misconception that the church of Christ (or any church) is or can properly be a temporal power. The fact that 106 nations are still involved in that diplomatic protocol surviving the Middle Ages is no reason for the United States to feel obliged to help perpetuate it; those 106 nations may not have the equivalent of the First Amendment of the U.S. Constitution."

Maddox, AU:

"Roman Catholic leadership readily admits the Holy See is a religious entity. Archbishop Cardinale, a prominent member of the Holy See's diplomatic service, says, 'The Holy See is the supreme organ of the Church universal in its contacts with other members of the international community.' The archbishop further says, in describing the various functions of the Holy See: 'Sometimes it denotes the Pope together with the central offices of the

Roman Curia, formed of the sacred congregations, the tribunals and the various other departments. Sometimes it designates the Pope in his role as visible head of the Church, possessing the apostolic primacy as successor of St. Peter. Finally, it sometimes indicates the spiritual organization of the papal government.'—H. E. Cardinale, *The Holy See and the International Order*. (Gerrards Cross, England: Colin Smythe Publishers, 1976).''

Cogdell, Church of Christ:

''The Holy See is simply the administrative center and governing apparatus of the Roman Catholic Church. (1) *The Catholic Encyclopedia* says that the 'Holy See' is synonymous with the term 'Roman Church,' in diplomatic usage. . . . Archbishop Cardinale in his monumental work, (2) *The Holy See and the International Order*, says, 'The Holy See is the juridical personification of the church in the same way the state is of the nation.'—Page 115. It is, he says, 'the supreme organ of the church universal in its contacts with other members of the international community.'—Page 85.

''Bishop Van Lierde in his book, *The Holy See at Work*, says that by the design of Divine Providence, The Apostolic See is the established center of the Catholic Church.—Page 43.

''References can be cited almost *ad infinitum* proving that the Holy See is in no sense a state, but is the world's largest church operating in its governing and administrative capacity—nothing more, nothing less.

''We submit to the honorable members of the Foreign Relations Committee that the official recognition by our government of the Papacy gives credibility to, and is a long step towards, legitimatizing these arrogant and despotic spiritual and temporal claims of the Pope.''

We Did It Before and We Can Do It Again

Kelley, NCC:

''The contention that the present appointment restores a relationship that set the precedent in the 1800s (until broken off by Congress in 1867) is contrary to fact: Rufus King was minister-resident to the Papal States, an area of 16,000 square miles in central Italy, with over 3 million inhabitants, which the Pope actually governed as a civil ruler at that time. The Papal States are no longer in existence. The Vatican City today has an area of one sixth of a square mile and less than 1,000 inhabitants. It would be of no diplomatic interest if it were not also the headquarters of a great world *church*.''

The Vatican in International Affairs

Senator Lugar:

''The Holy See maintains a diplomatic presence and has wide influence and unique access in areas of great concern to the foreign policy of the United States. Eastern Europe, Central America, Africa, and the Philippines offer several excellent examples.

''Vatican officials and diplomats are not simply observers or moral guides, but play an active role in international affairs. . . .

''Over the past two years the President, the Vice-President, the Secretary of State, and other cabinet officers have had audiences with the Pope to discuss a wide range of political and moral problems which confront the world. . .

''The fact is that in many ways the Vatican is a far more significant and wide-ranging actor than many of the other governments with which we maintain formal relations.''

Draper, SBC:

''We are disturbed that this Administration apparently views the Roman Catholic Church only in political terms and ignores its essentially spiritual qualities. Does the administration see all churches in this light? Are we all potential ''listening posts'' in the State Department's eyes?

''The Southern Baptist Foreign Mission Board, the largest missionary organization in the world, has passed a resolution opposing 'such a dangerous precedent that intertwines American self-interest and the higher priorities of the Kingdom of God.' ''

Dunn, BJC:

''[We hear that] this action will give the Pope more political leverage in his quest for peace and his struggle against Communism. Is this not the same Pope who directed his priests and nuns to avoid political involvement?''

Action Threatens Missionaries

Draper, SBC:

''We are disturbed by the threat this action poses to the 3,200 Southern Baptist missionaries in nearly 100 countries around the world. The implication that our government might use religious organizations for information, if not espionage, endangers not only the credibility of the message they deliver, but, in some war-torn countries, their very lives.

''Colorado's *Rocky Mountain Baptist* feared the indirect consequences to our missionaries in Latin American countries. . . . It is already too easy for leaders in those countries to identify all missionaries as involved in their political struggles as spies or revolutionaries.''

Winning the Global Struggle Against Communism

Cogdell, Church of Christ:

''You are no doubt being told that our sending of an ambassador to the Holy See of the Roman Catholic Church is important to our winning the global struggle against Communism. We ask you to look at the Latin American and European countries, including Italy itself, where Communism has gained the greatest influence, and see that the Church of Rome is far from being a bulwark against the inroads of Communism. Indeed, it seems in some cases to pave the way for a Communist takeover. Why is this? We believe it is because the Roman Catholic Church seeks, everywhere, as it is seeking right here and now, to link and entangle itself with secular power and authority and to receive special preference, privilege, and support from government—whatever government happens to be in control, whether fascist, communist, socialist, capitalistic, dictatorship, or democracy. Discerning people soon lose respect for both the church and the state which enter into such relationships, and finally choose a government which is hostile to religion in preference to one which debases religion by using it for political ends and purposes and which in return allows itself to be used for . . . ecclesiastical objectives.''

Of Entangling Alliances and Controlling the Bishops

Dunn, BJC:

''The stated purpose of the ambassadorship is to tap into the Church's vast information network. This is patently entanglement. . . . The editors [of *America*, a Jesuit magazine] expressed concern that an ambassador to the Holy See would seek to exert pressure on the Church to control the activities of the Church in America.

''It has been suggested that United States foreign policy would be set forward and that some intelligence network would become available to our nation by establishing such a formal relationship with the Roman Catholic Church. If any credence at all is to be given to these suggestions, they pinpoint precisely what we oppose. This entangling alliance would be the occasion for practical problems for all those engaged in the far-flung missionary venture in developing countries. Because of anti-American, antireligious, and antidemocratic sentiments in many of the developing countries, missionaries and other persons representing religious institutions would actually become symbols of American governmental interests. Should the United States

Senate follow the unwise course of the establishment of full diplomatic relations with any church, it would offer an occasion for misunderstanding, an invitation to chaos and confusion, and would place a burdensome albatross upon every American who represents religion overseas."

Kelley, NCC:

"The contention that the appointment of an ambassador will provide a channel for the flow of valuable international intelligence information not now available to the U.S. does an injustice to the ability of Mr. Wilson as the President's personal representative to the Pope, since it suggests that with the title of ambassador he could gain information that is not available to him now. It also impugns the commitment of the Vatican to the cause of freedom that is ostensibly sought to be advanced by this appointment since it implies that the Vatican would withhold information important to that cause from Mr. Wilson unless he were a full ambassador. Furthermore, it misconstrues the role of an ambassador, which is usually more symbolic, formal, and ceremonious than it is facilitative of close communications. The United States is not without numerous channels for obtaining significant information via the Vatican and otherwise; an ambassadorship is not the missing link in intelligence transmission. And even if it were, that is not an adequate justification for flouting the First Amendment of the Constitution of the United States, as we believe any appointment of ambassador to the Vatican would."

Swomley, ACLU:

"It is a violation of the free exercise of religion by American Catholics in that an ambassador to the Pope will permit the President regularly to interfere with statements or action of the Catholic bishops and priests who publicly differ with Administration policies. For example, President Reagan sent General Rowney to see the Pope on two occasions to curb the pastoral expression of the U.S. Catholic bishops in their Pastoral Letter on War and Peace. Unofficial but reliable reports indicate that the Pope did intervene with respect to that document along the lines of President Reagan's request. . . .

"[Quoting *National Catholic Reporter* writer Peter Hebbethwaite:] 'In the future, a quiet word between Wilson and Casaroli (Vatican secretary of state) in Rome, or Laghi (papal nuncio) at the State Department in Washington, could cool the [American] bishops' radical ardor. All in all, and especially in an election year, it is a good deal for President Reagan.'—*National Catholic Reporter*, Jan. 27, 1984, p. 5. . . .

"The First Amendment clause protecting the 'Free Exercise of Religion' was intended not only to prohibit direct government intervention, but also indirect overtures through a foreign prelate to stifle or alter the free exercise of religion."

Maddox, AU:

"Father Robert Graham, an American priest who works at the Vatican, expressed similar concerns in his book, *Vatican Diplomacy:* 'The presence of a representative of the White House at the Vatican, with direct access to the Holy Father, is almost a direct invitation to interference in internal American [Catholic] Church affairs' (Princeton University Press, 1959)."

Everybody's Doing It

Dunn, BJC:

"One hundred six states now have relations with the Holy See at the ambassadorial level. 'Everybody is doing it!' is an argument that never persuaded my mother and probably not yours either. Even President Reagan, on November 4, 1983, said, 'One hundred nations in the United Nations have not agreed with us on just about everything that's come before them where we're involved, and it didn't upset my breakfast at all.' The important point is that the United States alone has a First Amendment which forbids this action."

No Union of Church and State

Cogdell, Church of Christ:

"Honorable Senators, you are being urged to violate your oath of office to uphold the Constitution of this great free nation, and to drive a dagger into the heart of the First Amendment of the Bill of Rights.

"The divesting of the First Amendment of its strength and meaning by blatantly violating its plainest implications will be such a blow to this wonderful nation of ours as no alien power or ideology could inflict.

"It is the wall of separation between church and state and that alone which prevents the deep religious divisions of society from extending themselves into the public and political domain, and prevents the political divisions from being extended into the religious domain, to the detriment of church, of state, and of felicitous human relationships on every level. . . .

"The late Cardinal Cushing of Boston said—'I don't know of anywhere in the history of Christianity where the Catholic Church, the Protestant church, or any other church has made greater progress than in the United States of America; and, in my opinion, the chief reason is that there is no union of church and state.'—Boston *Globe*, Jan. 26, 1964, p. A-7." ✝

JUANITA L. CLAY, Ph.D.

July 22, 1984

Senator Orrin Hatch, Chairman
Senate Subcommittee on the Constitution'
THE UNITED STATES SENATE
Washington, D. C. 20510

Dear Senator Hatch:

At the close of the Subcommittee Hearing on June 26th, you indicated that for thirty days, you would hold open the record for additional testimony about other incidents of governmental interference in church affairs.

I am enclosing the attached copy of a newspaper article about a case in the U. S. Fourth Circuit Court of Appeals in Richmond,Virginia, which describes government interference in church affairs. Please insert this into the record of the Hearing. I had hoped for a written testimony from the minister involved; but have not yet received a copy so I am forwarding the information contained in the news article. Since the case is a matter of record in the Federal court, the facts are easily available to your staff.

Please send me a complete transcript of the hearing. I sincerely appreciate your efforts in behalf of religious freedom in our country.

Sincerely,

Juanita L. Clay

Juanita L. Clay, Ph.D
P. O. Box 44615
Indianapolis, IN 46244

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Journal & Guide

'THE PUBLISHER'S PEN

By Dr. Milton A. Reid

SPECIAL EDITION

April 27, 1984

IN DEFENSE OF RELIGIOUS LIBERTY

Special. . . Special. . . Special. . .

One of the most important cases in the defense of Religious Liberty will be heard in the U.S. Fourth Circuit Court of Appeals, Main Street Post Office Building, Richmond, Va., on Tuesday, May 8 at 9:00 a.m. The hearing will be for one hour only before a three-judge panel. There will be no witnesses, and no one will take the stand. The attorneys will argue the case based upon briefs filed and answers already in the hands of the court. You are invited to attend this hearing and to encourage as many ministers and lay persons from your congregation as possible to attend.

What Is At Stake

The issue is whether the Commonwealth of Virginia has the constitutional or the judicial authority to interfere in the ecclesiastical affairs of a church. The Honorable Alfred W. Whitehurst, judge of the Circuit Court in Norfolk:

- Nullified duly-called church meetings at New Calvary Baptist Church.
- Ordered the church not to install duly-elected officers or ordain deacons elected by the congregation.
- Ordered the church to maintain the status quo.
- Determined who could vote in the congregation and who could not.
- Invalidated the right hand of fellowship.
- Ordered a white man of the Jewish faith to conduct and oversee the annual meeting of New Calvary Baptist Church.
- Ordered the Pastor and four deacons to turn over the membership list of the church to Mr. Mazelle, the Jewish overseer and representative of the court, even at the objection of the church which voted overwhelmingly in two meetings that its membership list should not be turned over to a secular authority.
- Levied a fine of $1000 a day against the pastor and $25 a day against the deacons for not complying with his order and held the pastor and deacons in contempt of court.
- Nullified church disciplinary actions against dissident members who have filed suit after suit against the pastor and officers of the church. The church first "silenced" 18 members. The church since (on April 8 during the annual meeting) has dismissed 31 dissident members from the church. The Honorable Judge Whitehurst has ruled the church out of order on all of its activities.
- Ordered the church to meet and set up the agenda for the meeting. Determined how long members could speak and who could speak, in complete disregard for church policy and practice.
- Ruled invalid and out of order a constitution and bylaws developed and adopted by the church. The bylaws and constitution were read before the congregation each Sunday for a month. Members were given copies to read for themselves. Only two members out of 308 disapproved the constitution and bylaws. No member was prohibited from voting.

Hard To Believe

I know you find this hard to believe. This is the kind of religious oppression that went on in the Soviet Union during the reign of Khruschev. We would expect it there, but not here in America where we have the Bible as our authority of faith and practice and love, protection of the 1st Amendment, the 13th and 14th Amendments to the Constitution.

It is important that a significant number of clergy and members of the black church in Virginia attend this session of the Court on Tuesday, May 8. This court, 4th Circuit, has already ruled in other cases that the Constitution prohibits the state from interfering in the ecclesiastical affairs of the Church. Will the court uphold its own ruling or will the court reverse itself? Your presence will be of significance in the court's decision.

You know that the Black Church is the last of the institutions completely owned and controlled by black people. If we lose our basic rights because of the paternalistic and racist desicions of a modern- day Pilate, the black church will suffer greatly. Please do you very best to join with me and members of the New Calvary Baptist Church on May 8 in Richmond.

The Center for Constitutional Rights of New York has the case in charge under Attorneys William Kunstler and Betty Bailey of New York, and Attorney James Gay of Norfolk. Although the Center makes no charges for its services, the Church has spent over $10,000 in this two-year-old battle with approximately $6000 in local attorney fees now due. If you cannot attend this Court hearing, the officers and members of the New Calvary Baptist Church would appreciate any contribution that you could make by May 8. You may mail your contributions to Deacon Dennis Perry, Treasurer, New Calvary Baptist Church, 800 E. Virginia Beach Boulevard, Norfolk, Virginia 23504. As much as we need your financial support, your presence would mean much more. If you would attend with a check we would consider that a double blessing.

For All Of Us

This case, the first of its kind in the history of the world, is not just for New Calvary, it is for every church in American in defense of Religious Liberty.

JUANITA L. CLAY, Ph.D.

July 22, 1984

Honorable Orrin Hatch, Chairman
Senate Judiciary Subcommittee on the Constitution
THE UNITED STATES SENATE
Washington, D. C. 20510

Dear Senator Hatch:

Again I commend you for the excellent manner with which you conducted the subcommittee hearing on June 26th, regarding issues in Religious Liberty.

Prior to adjourning the hearing, you indicated that we had thirty (30) days in which to submit additional testimony for consideration by the subcommittee. Therefore, I am forwarding the attached testimony of Col. Robert L. Grete, director of the ROCKY BAYOU CHRISTIAN SCHOOL, in Niceville, Florida. This is only one of several situations I am concerned about, several of which I have forwarded to you already. However, I asked Col Grete to allow me to submit his testimony because it points up the problem of an althernative school, performing an excellent educational function, but subjected to repressive legislation and beaureaucratic interference, without the benefit of any denominational sponsorship.

As an informed layperson, not representing any of the constituent groups identified at the hearing, I am nevertheless concerned about the extent to which congressional legislation is not aimed at precluding government animosity toward religious organizations or institutions. Neither the Supreme Court mor the Internal Revenue Service should be allowed the authority to foreclose the rights of individuals or instutions they were designed to protect. Nor should civil authority seek simultaneously to weild supreme authority to tailor religious destiny, whether the destiny of a church, or a religious organization, or a Christian school.

Please continue your efforts to pursue full knowledge in this issue, and to guide the legislative process preserving the structure of government that makes the very idea of religious freedom and rights meaningful.

Sincerely,

Juanita L. Clay, PhD.

JUANITA L. CLAY, Ph.D.
P. O. Box 44615
Indpls., IN 46244

Rocky Bayou Christian School
2101 NORTH PARTIN DRIVE NICEVILLE, FL 32578
TELEPHONE 678-7712

13 July 1984

TESTIMONY OF ROBERT L. GRETE

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Robert L. Grete, Director of the Rocky Bayou Christian School (RBCS) in Niceville, Florida. RBCS, a member of the Association of Christian Schools International (ACSI) and the American Association of Christian Schools (AACS) is an independent rather than a parochial (organized as part of a local church or denomination) Christian school.

The purpose of my testimony is to provide a small independent Christian school's perspective on the erosion of religious liberty in America.

Since the founding of Rocky Bayou Christian School in 1973, each year an increasing amount of my time involves the defense of religious liberty. We constantly receive appeals from our Christian school associations for aid in alerting our representatives to threats to our freedom. Each year it seems more bills are introduced into the state and federal legislatures that threaten religious liberty. Decisions by the courts have had the same effect.

I believe that the threat to religious liberty arises from the efforts of antitheistic/humanistic leaders trying to establish a set of religious presuppositions that are antithetical to the traditional Judeo-Christian or biblical religious presuppositions upon which America was founded. Using secular education and the influence of the media (Hollywood films, television, the broadcast industry and the music industry), secular[1] and humanistic[2] leaders have worked toward a goal stated in the Humanist Manifesto II as

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[1] Secular means "apart from the supernatural" or worldly. Secularism is a faith that leaves out the Creator of the universe.

[2] Humanism is a faith that defies man. Rather than submitting to the Creator, man is made the measure of all things, the provider, and the determiner of right and wrong.

[3] See Humanist Manifestos I & II (NY: Prometheus Books, 1973).

"a secular society on a planetary scale." John Dewey, the father of American progressive education was a powerful subscriber to Humanist Manifesto I. The increasing success of such leaders is due in part to the inactivity of those who hold to the Judeo-Christian values. Such pietism in the Bible-believing community has surrendered much of the control of the centers of influence in American society to antibiblical humanistic leaders.

The education of children plays a vital role in shaping the values of the leadership of future generations. American education has been increasingly secularized as governmental authority was extended over it. Systematically, government power has been used to increasingly eliminate biblical values from public schools. Today, the efforts to purge biblically-based religious values from the public schools have been so successful that Congress and the federal courts are involved in such questions as, "Can children pray in the public schools?" and, "Can groups meeting in public facilities discuss theistic topics or is their speech limited to presumed secular subjects[1] no matter how perverted from a biblical viewpoint?"

Hand in hand with the purging of biblical truths and values from government operated schools, secular and humanistic leaders (using a number of organizations to include the National Education Association (NEA), local, state and federal government agencies, and the media have launched a frightening effort to subject non-government schools to their effective control. The result, if they are successful, will be as complete an eradication of biblical influence in the education of our nation's children as that accomplished in Germany by Hitler's Third Reich or by the Soviet Union today.

As the administrator of a Christian school, the defense against this effort requires daily energy. I am sure this Senate committee will collect considerable data on a multitude of cases, many of which are a matter of court record. Before going into the specifics of RBCS confrontations, I would like to mention some of the specific tools now being used by American governmental agencies to effect religious tyranny over religious educational ministries. The control devices, which have been used historically, include:

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[1] To a Biblicist, all subjects are religious since they involve some aspect of God or His perspective on His creation. Christ is sovereign over every area of a Christian's life.

1. Licensing. If civil government can license an activity, it exercises the power to terminate it or require it to conform to regulations as a condition of operation.

2. School Accreditation/Teacher Certification Requirements.

3. Arbitrarily or discriminatory enforced health, welfare, safety, and zoning regulations.

4. Direct regulation of various aspects of the religious ministry (e.g.: personnel - immoral persons such as sodomites cannot be excluded from the faculty; curriculum - texts must be chosen from state approved lists; etc.)

5. Public trust concept. Religious organizations are considered creatures of the state to be operated according to the wishes of government agents rather than ministries under God required to operate according to biblical authority.

6. Biblically based religious faith must be subordinated to contrary public policy. Thus the whims of fallen man subordinate God's absolute standards.

7. Taxation. The power to tax assumes sovereignty or lordship, and is the power to control and destroy.

8. The tax expenditure concept. This is one of the most perverse concepts being pushed into the public policy arena; tyrants must love it. This radical idea rejects the biblical and constitutional concepts that the fruit of a person's labor belongs under personal stewardship and that the portion of a

person's property that is transferred to civil government should be determined by the consent of the governed. Rather, the tax expenditure concept assumes that all property is owned by the civil government, which can then decide how much to allow citizens to keep under personal stewardship. Anything left in the hands of the citizens is a tax expenditure subject to the controls civil government desires to set upon its use. Thus, nothing escapes government control, since money a person or institution uses has either come from government or remains at its true point of origin by government grace. The degree to which this monstrous doctrine is finding acceptance today is frightening. Efforts to get Congress to reject it (e.g., HR 1002, 96th Congress, First Session) have failed. Also, consider the US Supreme Court's recent ruling in the Grove City case and the perverse "corrective" legislation being proposed (HR 5490). This case illustrates the logic that civil governmental control goes with any governmental financial assistance, which under the tax expenditures concept, even means any money the government lets individuals keep. Yes, tyrants must love it!

The perverse exercise of these control tools (whether legitimate authorities such as "3" above, or unconstitutional usurpations such as the rest) are based upon the presuppositions of the humanistic state. Some of the presuppositions underlying the concept of the humanistic state are that the civil state:

1. Has sovereignty over all authorities - even that of the Creator of the universe Who originates human authority and is alone sovereign.

2. Owns the earth, its produce, and the people under its jurisdiction, denying the biblical concept that God owns the earth and civil government is one of several limited jurisdictions designed to carry out specific purposes.

3. Owns the children, denying that God owns the children and has given parents stewardship over them.

4. Authors human liberty, denying the concept that "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. That to secure these rights, Governments are instituted among men, deriving their just powers from the consent of the governed." (Declaration of Independence)

5. Defines right and wrong rather than submitting to God's biblical standards of righteousness.

6. Is the provider of economic resources to the people. This denies that God distributes economic resources, generally to those who earn them through personal responsibility and work.

Citizens have no protection against tyranny when the civil state, which has the biblical function of protecting God-given liberty, assumes the role of God in society.

The exercise of the tools of tyrannical control based upon the presuppositions of the humanistic state is rapidly increasing in America. If Congress does not understand this trend or does not wish to reverse it, the sovietization of America will soon be complete. Consider the words of American communist, William Z. Foster in his book Toward Soviet America:

> Among the elementary measures the American Soviet government will adopt to further the cultural revolution are the following; (SIC) the schools, colleges and universities will be coordinated and grouped under the National Department of Education and its state and local branches. The studies will be revolutionized, being cleansed of religious, patriotic and other features of the bourgeois ideology. The students will be taught on the basis of Marxian dialectical materialism, internationalism and the general ethics of the new Socialist society. Present obsolete methods of teaching will be superseded by a scientific pedagogy.
>
> The churches will remain free to continue their services, but their special tax and other privileges will be liquidated. Their buildings will revert to the State. Religious schools will be abolished and organized religious training for minors prohibited. Freedom will be established for anti-religious propaganda. (@ page 316)

Mr. Foster's view, the doctrine of the secular-humanists stated in the Humanist Manifestos I & II, as well as biblical doctrine, make one point absolutely clear: THE EDUCATION OF CHILDREN IS AN INHERENTLY RELIGIOUS ACTIVITY. Yet, it seems that few people in America today understand the inherent religiousness of education that forms the world view and values of children. RBCS is presently developing a Christ-centered phonics and math curriculum at the kindergarten level that we would be happy to demonstrate to the Committee if desired. The point is that everything that we do in a Christian school is to be done from a biblical prospective. We must control, discipline, train, and love our children according to Christ's commands. We must teach every area of knowledge from a biblical perspective, heeding the biblical warning:

> See to it that no one takes you captive through philosophy and empty deception, according to the tradition of men, according to the elementary principles of the world, rather than according to Christ.
>
> (Col 2:8, NASV)

The First Amendment to the US Constitution bars Congress from making any laws respecting an establishment of religion or prohibiting the free exercise thereof. If we accept the judicial doctrine that the 14th Amendment applies the First Amendment to the states, or if we note that almost all State constitutions have a similar provision, then government operation or control of schools is constitutionally prohibited. I believe congressional action on this truth is essential to the preservation of religious liberty in America.

We should recognize the documented excellence of American education before civil government became involved. Those who believe that the education of America's children should be funded through the coercive government tax system have the constitutionally more acceptable tools of vouchers and tax credits to work with.

The foregoing comments indicate my conviction that parents should have the right to organize or utilize any school they choose to educate their children according to their own religious presuppositions. No school should survive through political coercion. Schools should survive because parents support them as their servants. Nevertheless, today civil government not only operates the nation's largest school system, but also seeks to extend control over non-government schools.

RBCS was organized in 1973 to provide a biblically-based education to the children enrolled. Over the first 10 years of our existence our student body has grown from 22 to over 370. This has been in the face of continuing handicaps caused by unwarranted governmental actions. I will mention those of most significance and would be glad to offer documentation or details to the Committee on any issue of interest.

First, government operation of tax funded schools produce a handicap to the existence of schools that reject their secular faith. RBCS parents are discriminated against because they must pay taxes to support the government school system which teaches an anti-Christian religious faith contrary to their own. How can it be constitutional for civil government to force people to pay for the propagation of a religious faith not their own? In addition, however, our parents must pay the cost of the biblically-based education of their children, which is a significant cost on top of the extravagant costs of secular education.

The second handicap caused by unwarranted governmental activities is the administrative cost incurred because we must meet purposeless government requirements. For example, when we organized RBCS we were to told to write, inter alia, an application for a Federal Tax Exemption Letter. After hassles like having to provide data not requested in the printed IRS instructions, we finally received our Letter in October 1974. The Exemption Letter directed us to file IRS Forms 990. After IRS lost our 1977 Form 990, I more closely examined the instruction booklet and got my first initiation into IRS insensitivity to religious liberty issues. The details are found in my attached letter to the Christian Law Association dated 26 December 1979 (ATCH 1). (If the Committee desires the letter's attachments, RBCS will provide them.) The letter indicates a trail of lost documentation, bureaucratic hassle and evasiveness, and possibly an attempt at intimidation. By refusing to genuinely respond to my question regarding IRS discrimination among religious organizations, IRS demonstrated an insensitivity to the religious liberty issue and successfully wore me down. I cannot teach students and administer a growing school if I must spend lots of time trying to get justice from the IRS bureaucracy.

Thirdly, there is an increasing volume of legislative proposals that threaten our ability to exist apart from government control. An increasing amount of time is spent by all of us in the field to deal with such issues. Many parents are discouraged from enrolling their students in Christian schools because of either the media's misinformation concerning government actions against schools or the fear of becoming involved in litigation. I am sure the Committee has the details of many such cases, but I would like to comment on one prominent example that you are familiar with.

On August 22, 1978, Jerome Kurtz, US Commissioner of the Internal Revenue Service, placed his "Proposed Internal Revenue Procedures on Private Tax Exempt Schools" in an inconspicuous part of the Federal Register. Those procedures, which have the potential of extending great control over Christian schools, were disguised as a defense of racial nondiscrimination. I attach my letters to Mr. Kurtz of 2 October 1978 and 11 April 1979 (ATCH 2 and 3) to indicate some of the details of this issue. Neither letter, of course, was responded to by IRS. A large response by the Christian community forced the IRS to hold hearings on this issue. Revised Proposed Procedures were subsequently published in the Federal Register February 13, 1979. The revised procedures, however, did nothing to remove the major issue in this case. The Proposed Procedures first of all would allow the IRS to arbitrarily consider a school guilty of racial discrimination without being required to prove it. Such schools, to be termed "reviewable schools," could prove their innocence only by a radical affirmative action program. The basic logic is that unelected government agents would gain the authority to place sanctions on any school that did not conform to the agency's concept of public policy. What a dangerous precedent! For several years the Ashbrook-Dornan Amendments to Treasury Appropriations Bills prevented the IRS from effecting these policies. Then the tragic US Supreme Court decision in the Bob Jones University case seemed to put into American law the principle that religious freedom would have to be subordinated to public policy. We live in an age when radical feminists and gay rights leaders are demanding affirmative action in favor of sodomists. Clearly biblical values could not be practiced by Christian schools if their radical demands became public policy. With hundreds of similar attempts to extend governmental control over religious ministries happening simultaneously throughout America, as a Christian school administrator I sometimes wonder where I will find the time to administer our biblically-based program. It seems I am derelict in my duty if I am not crying out against each of the threats against us. Yet to do so, would require all my time. More seriously, if the fruit of these adverse precedents soon come to pass, it is quite clear that the Christian school movement will no longer exist. Government will even have the ability to confiscate all the property of religious ministries that do not conform. Such a prospect is now a real possibility under the principles of the laws mentioned in the next item.

Fourthly, the federal government is handicapping Christian schools through laws which not only increase personnel costs but also provide the federal government with an instrument of control that can actually result in the confiscation of the property of a religious ministry. The acts used to accomplish this are the Federal Unemployment Tax Act (FUTA) and the Social Security Amendments of 1983. As a Christian I believe the socialistic systems effected by such laws go far beyond biblical and constitutional boundaries. Although I realize in today's environment that these socialistic systems are not likely to be eliminated, their recent extension into religious ministries violates the religious conscience of those forced to participate as a precondition to the exercise of their religious ministry. Allowing voluntary participation by members in religious ministries would be legitimate. Mandating participation in a government program as a precondition to employment in a religious ministry, however, certainly violates our First Amendment liberties. Religious ministries should be left alone to provide for such contingencies as unemployment and retirement in a way in keeping with their faith.

Further, applying these laws to religious ministries opens up a degree of federal government entanglement in the personnel policies of religious ministries that could be used for all kinds of offensive control. Failure to submit to the unbiblical and unconstitutional taxation required by these laws can lead to the confiscation of the ministry's property, which obviously puts an end to the ministry. Truly, the power to tax is the power to control or destroy.

Focusing on the alleged requirement of RBCS to pay the unemployment compensation tax, I attach a recent bill showing the state's claim of taxes due plus interest and penalties (ATCH 4). The reason we periodically receive such bills goes back to the unilateral action of Secretary of Labor Ray Marshall, who decided to expand FUTA revenues by including employees of religious organizations. The U.S. Supreme Court in St. Martin Lutheran Church v. South Dakota (May 26, 1981) blocked the Labor Department's attempt to collect such taxes from "church" organizations. Although independent Christian schools such as RBCS have religious ministries identical to those of parochial schools, this St. Martin decision did not extend to independent Christian schools. The Supreme Court decided to leave the status of Christ's schools organized differently for a future day. Consequently, parochial schools no longer have this hassle, but independent Christian schools (approximately 30 percent of the Christian schools in America) must continue to endure this harrassment. A case involving an independent Christian school is now in progress in Oregon. Should the Supreme Court uphold our position in that case, then I assume the State of Florida will stop sending us bills such as the one at ATCH 4. If the Supreme Court finds against us, it will be further progress along the road to the annihilation of religious ministries not organized in accordance with government specifications.

Similar issues are raised by the Social Security Amendments of 1983. In an effort to bail out the bankrupt system through increased tax revenues from extended coverage, Congress voted to include religious organizations in the Social Security system. In December, 1983, the Senate Finance Committee held hearings on this issue. Rather than concluding that religious ministries are not taxable (as the First Amendment requires), the Committee agreed on language which would pass the tax obligation of employees of "church" organizations from the ministry (institution) to the employee directly. This, it is believed, avoids the First Amendment issue caused by laying a direct tax on a church. The language to effect this change was incorporated in the Tax Reduction Act of 1984, which I now understand has been sent to the President for signature. If signed into law, the option given to church organizations may forestall some litigation by such ministries. The law, however, will not at all relieve RBCS and similar independent schools from the obligation to pay a direct tax to the federal government. The word "church" is not found in the First Amendment. In light of the fact that the First Amendment religious clauses use the expressions "establishment of religion" and "the free exercise thereof," confining unencumbered religious activity to churches or any other organizations prescribed by the federal government is obviously discriminatory and a direct violation of the First Amendment. I attach my letter to Senator Dole of 5 December 1983 (ATCH 5), which points out the difficulty caused by certain language included in several public laws that produce this discrimination. Attached to that letter is also a document explaining the biblical and constitutional objections RBCS has to any government taxation that permits controls over religious ministries. I believe the details in that correspondence are sufficient to completely illuminate our concerns in this area. I realize that I am now in the position, even after passage of the Tax Reduction Act of 1984, of being jailed and heavily fined for failing to pay our institution's share of this unconstitutional tax. I would pray that the Congress would see the catastrophic effects that coercive inclusion of religious ministries in the Social Security system can have on our country.

The above specific cases of our confrontation with the federal govenment is a rather mild sampling of the handicaps that government action have placed on Christian schools when viewed from a national point of view. Nevertheless, they are sufficient to demonstrate that religious liberty is at great peril in our country.

I thank you for this opportunity to express an independent Christian School administrator's perspective on the threat to religious liberty in America today. As we drift further away from the divine Author of liberty, the foundation for liberty is eroded. Liberty authored by autonomous man inevitably degenerates into tyranny.

Attachment 1

Rocky Bayou Christian School
2101 NORTH PARTIN DRIVE NICEVILLE, FL 32578
TELEPHONE 678-7718

26 December 1979

Christian Law Association
P.O. Box 30290
Cleveland, OH 44130

Dear CLA:

In accordance with the spirit of your article, "Helping the CLA to Help You," in the November Defender, I enclose the facts of a problem RBCS expects to have with the IRS. The most dangerous aspect is that IRS unilaterally revised our exemption in a way that implies RBCS must begin paying social security and unemployment taxes, which, of course, we will not do. To assist your analysis, I provide the following facts and supporting documents. Please advise if you need anything else to complete our file.

On 12 June 1973 (as a Christian Air Force officer and Elder, Forest Lake Bible Church) I accompanied my Pastor (Harold E. Thomas) to visit Bob Thoburn's Fairfax Christian School in Fairfax, Virginia. It was there I realized that I could not use the government schools to educate my six children, but was, of course, very ignorant of the details of the philosophy of Christian education and the increasing state animosity toward Christian schools. We reported the findings of our visit to the Joint Board of our relatively new and small church, which voted not to establish a Christian school because it would excessively dilute efforts to perform other necessary operations. I asked if there were any objections to individual members beginning an independent Christian school; there were no objections.

God led us, on 3 July 1973, to commit ourselves to establishing RBCS. Although on active duty, I accepted the responsibility of Director and using Bob Thoburn's manual and advice from a local "Christian" lawyer, began laying the school's foundation. We opened that September with 22 students, grades four-year-old kindergarten through six, two full-time teachers (Mrs. Grete and Mrs. Thomas) and two part-time teachers. We now have 200 students.

I was advised that we must write a Corporate Charter (Atch 1), Bylaws (Atch 2), and obtain Federal and State Tax Exemption Letters to legally operate as a tax-exempt corporation not-for-profit. I followed application procedures to obtain our original Federal Tax Exemption Letter dated October 21, 1974 (Atch 3), which directed us to file IRS Forms 990. Please forgive my continuing ignorance of the issues, but this we dutifully did.

In December 1976, the Air Force sent me on a one-year remote tour to Korea. While there, I continued to study and learn more about Christian education. In summer 1977, the school office filed our FY 77 Form 990, which IRS apparently lost in a shuffle between their Atlanta and Philadelphia offices. We were advised by IRS letters dated May 19 and June 23, 1978, (Atch 4) that IRS did not have our FY 77 form. We sent them a reaccomplished copy dated July 15, 1978 (see remarks, Atch 4). As we were accomplishing our FY 78 Form, we received another IRS letter by Mr. Samra dated October 19, 1978 (Atch 5), stating that IRS could not find our FY 77 Form 990. At this point, I began to question the propriety of our filling out the Form 990, and read the instruction booklet more carefully. Since the language of the instructions specifically exempts "schools below college level operated by a religious order," I replied to Mr. Samra's October 19 letter with mine dated 6 November 1979, presenting rationale for the position that we should not file Form 990 (Atch 6). I did, however, include our reaccomplished FY 77 and new FY 78 forms.

I heard nothing for two months. On 15 January 1979, I queried Mr. Samra on his progress in getting an answer to my question of 6 November, i.e. "Why must RBCS file annual Form 990?" (Atch 7). He responded on 7 February 1979, that he could not find my 6 November 1978 letter (although he apparently had the Forms 990 under control), and that he was forwarding my request to the Jacksonville, Florida, office (Atch 8). To facilitate the Jacksonville office's work, I indorsed Mr. Samra's letter and forwarded a copy of my 6 November 1978 letter on 13 February 1979 (Atch 8).

27 February 1979 is an interesting day in this case. On that day, Maye Harper of the Atlanta IRS office wrote that she had just received my 6 November 1978 letter to Mr. Samra. She explained how our forms may have been lost, and advised that she sent the 6 November letter to Jacksonville for reply (Atch 9). (I was so pleased with the helpfulness of her response that I wrote her a letter of thanks on 20 April to which she responded on 3 May. This correspondence is also at Atch 9.)

Also on 27 February, Ms. G. Farley (signed Withers) of the Jacksonville office sent a classic piece of bureaucratic garbage brushing off my question and giving us 60 days to file amendments to our charter since they had no record of them in their file (Atch 10). (Their own copy of our exemption letter, however, indicated that our file had been checked OK after our amendments had been received - see Atch 3.) I believe this is a case of harrassment.

To understand what follows, I must relate something I subsequently discovered: Jacksonville had two separate working files on RBCS with two separate case officers (Ms. Farley and Mrs. Dewey) who didn't know what the other was doing.

On 19 April 1979, I responded to Ms. Farley's February 27 letter (Atch 11), asking her to give a serious answer to my question (she hadn't even seen my 6 November letter), and providing additional copies of the amendments missing from her file.

On 25 April 1979 I received a phone call from Mrs. Dewey (see MFR at Atch 12), saying she just received my 6 November letter (probably the one sent by Maye Harper). After cordially discussing First Amendment issues, she said she would get with Ms. Farley to give me an official response.

On 7 May, I received a very hostile call from Ms. Farley, who had received my 19 April letter but had neither spoken to Mrs. Dewey nor read the rationale in my 6 November letter (see MFR at Atch 13). Before hanging up on me, she said she would leave it to Mrs. Dewey to respond to my question.

On 8 June 1979, Mrs. Dewey provided the IRS response to my question (Atch 14). She quoted two lower court cases which I do not believe are relevant to my argument. At issue in her argument is the definition of a church. I prefer that of Scripture; IRS does not. Her bottom line is that since our exemption letter of 21 October 1974 indicates RBCS is a school, we must file the 990. I took no action to respond to this since I was too busy with other things.

The shocker came when I received from D. Warnick (Jacksonville) an unsigned determination letter modifying our original 21 October 1974 letter (Atch 15). My comparison indicates that the revision imposes on RBCS the unlawful and unconstitutional requirements to collect social security and federal unemployment compensation taxes. It reaffirmed our obligation to file the 990.

I do not consider the unsigned revision authoritative. I do consider it unlawful harrassment.

On 13 November 1979 I filed our FY 79 Form 990 covered by a letter reaffirming my conviction that IRS errs in asking us to file it (Atch 16), and responding to Dewey's 8 June 1979 answer to previous correspondence. Please see the letter for the exact language, but my bottom line is that IRS does not have constitutional authority to interfere with religious ministries either through tax laws or subversive definitions. I asked if it were the IRS position that Biblical definitions are to be rejected in favor of those of IRS's own making, and again appealed for a finding that we are not liable to file the Form 990.

I have not yet received a direct response to my 13 November 1979 letter, but did recieve an IRS form letter dated December 17, 1979, acknowledging receipt of my FY 79 Form 990, and instructing me to provide additional information (Atch 17). In my original return, I inadvertently did not check a Part V block indicating the Reason for Non-Private

Foundation Status, and also missed the requirement to fill out Part VI. Since their request for additional information only requires a check in Part V, block 2, (they sent no form with Part VI) that is all that I am sending them at this time.

I hope to hear from you before I hear from IRS again. Request you advise me:

1. What action should RBCS take in response to the revised determination letter dated July 20, 1979?
2. Should I respond to any more requests for Form 990 information?
3. Where should I go from here in the effort to get IRS to recognize that they err in asking for the Form 990 from RBCS?

I praise God for your ministry.

In Christ's service,

Robert L. Grete
Director

LG:lh

Attachments

Attachment 2

Rocky Bayou Christian School
2101 NORTH PARTIN DRIVE NICEVILLE, FL 32578
TELEPHONE 678-7712

2 October 1978

Mr. Jerome Kurtz
Commissioner of Internal Revenue
Attention: E:EO
Washington, DC 20224

Dear Mr. Kurtz:

I have received a copy of your proposed Revenue Procedure on Private Tax-Exempt Schools, announced in the Federal Register of 22 August 1978. I appreciate the opportunity to provide you my comments on a proposal which I firmly believe is unsound and unconstitutional. I respectfully request that you withdraw the proposal from consideration.

Let me first make clear that Rocky Bayou Christian School has a genuine nondiscriminatory policy. On both Biblical and Constitutional grounds, we declare that no student will be denied admission on the basis of race, color, or ethnic origin. My objections to your proposed procedures have nothing to do with the goal of facilitating equal opportunity in education. We fully support that goal. I find the proposal objectionable because it is destructive of that goal and the basic liberties guaranteed the American people by the First and Fourteenth Amendments to the Constitution of the United States.

First, I notice that the IRS definition of a racially nondiscriminatory policy requires that the school not discriminate on the basis of race in the administration of its policies. Yet the five factors to be used to determine that a school is nondiscriminatory are blatantly discriminatory and racist. Schools are being asked to demonstrate their nondiscriminatory policies by discriminating on the basis of race. This is nonsense. 1984 is here! Not only is it nonsense, but also it is unconstitutional (if I understand the Bakke decision correctly).

Secondly, the proposal to avoid discrimination by discriminating burdens schools with the administrative cost of keeping records according to race, when we should consider race an irrelevant criterion. I do not count how many blue-eyed/brown-eyed/green-eyed/icky-eyed students we have. This is irrelevant information. Why does IRS want me to keep records according to racist criteria? I want to see a student as Fred, Sally, or Brian, not as our Black, Chicano, or Asian. Your proposal is destructive of the goal to truly make race an irrelevant criterion. You are requiring decisions based upon racist criteria. You are forcing schools to bear costly, unnecessary administrative burdens to carry out racist actions in the name of nondiscrimination.

If the above two objections were my only objections, I doubt that I would take time out of my very busy schedule to comment on the proposal. I would figure IRS would not bother RBCS anyway. No court has determined RBCS to be discriminatory; we were not formed about the time of public school desegregation in our community, and we have enough fine students from the ethnic minorities in our community to meet your quota standards. So why should I bother to write to you? The answer lies in the significance of my third objection.

Our constitution incorporates some rather precious liberties which include due process of law and religious freedom. The proposal violates the former because guilt is presumed and the accused is required to go to the expense and trouble of proving innocence. That is backwards. If a school discriminates on the basis of race, those wronged can provide the basis for a legitimate determination of guilt. This illegal procedure is the type of tool tyrannical government can use to intimidate according to whim. For example, as the performance of Christian school students increasingly embarrasses those responsible for the increasing failure of the statist schools to graduate students of academic competence, the already increasing efforts of some governmental officials to eliminate the competition could reach a fever pitch. The NEA is already in a state of panic, and is collecting as many political debts as possible. The IRS has great potential in the hands of tyrants. We must be vigilant to insure that government agencies do not violate due process of law.

Similarly, we must insure that government does not violate the First and Fourteenth Amendment protection of religious freedom. The power to tax is clearly the power to control and even kill. That is the whole basis of the concept of tax exemption. Thus, the Federal Government cannot tax the State of Florida and vice versa, and neither can tax the religious associations and functions of their citizens. RBCS was founded because of our religious conviction that we must raise our children in accordance with Biblical principles. The secular schools, based upon the religious principles of Secular Humanism, cannot help Christian parents raise up their children to love God with all heart, mind, soul, and strength. The religious presuppositions of Secular Humanism are antithetical to those of Biblical Christianity. One of the main reasons that many of our founding fathers fled Europe was the religious oppression due to the establishment of state religions by various governments. One of the main concerns of the drafters of our precious Constitution was the protection of religious freedom. Sinful man has a natural tendency to oppress others who think differently. It is possible that religious Secular Humanists may gain complete control of our governmental machinery and use it to destroy the ability of Theists to freely practice their religion. I fear we are heading in that direction. I do not know what faith you hold to, Mr. Kurtz, but our Constitution was designed to protect your freedom to hold and practice that faith. Such freedom is rare on the face of the earth. Most people do not have this freedom; America is in danger of losing it. If the secular state is used to eliminate Christian education, the power to tax will undoubtedly be one of the weapons used. I pray that you do not want that to happen.

Usually, attempts to destroy freedom are disguised as noble attempts to protect it. The issue here is not freedom from arbitrary discrimination. The issue here is control over education, an inherently religious enterprise. I ask you to reverse the dangerous direction of current IRS policy by withdrawing the proposed procedures. Will you do that Mr. Kurtz? I await your reply with great expectations.

In Christ's Service,

Robert L. Grete,
Director

RLG/jr

Attachment 3

Rocky Bayou Christian School
2101 NORTH PARTIN DRIVE NICEVILLE, FL 32578
TELEPHONE 678-7718

11 April 1979

Mr. Jerome Kurtz, Commissioner
Internal Revenue Service
Attention: E:EO
Washington, DC 20224

Dear Mr. Kurtz:

I have carefully reviewed the Revised Procedure on Private Tax-Exempt Schools published in the 13 February 1979 Federal Register and partially corrected in the 26 February 1979 Federal Register. Although RBCS meets your ethnic minority quotas and therefore would fit the criteria for neither a "discriminatory" nor "reviewable school," I add my voice to those of hundreds of thousands of Americans concerned about the extent to which big government has extended its social engineering into the family life of our citizens. Your revision of the Procedures failed to remove their repugnance to our Constitutional liberties.

The issue is not racial discrimination; RBCS finds racial discrimination contrary to Biblical principles. The issue is whether our freedom to raise and educate our children according to Biblical principles will be trampled upon by bureaucracies such as yours. The First Amendment to the U.S. Constitution was designed to prevent government entanglement in religious affairs. Yet we find that government has violated the Amendment's Establishment Clause by establishing in the government school system the religious presuppositions and practicing faith of Secular Humanism. The unconstitutional establishment of this anti-Christian faith and practice in the tax-financed government schools has driven many Christian parents to pay tuition, in addition to required school taxes, to enable their children to be educated in accordance with Biblical principles rather than those of Secular Humanism. To so educate our children is a God-given responsibility protected by the First Amendment's Free Exercise Clause. Yet we see increasing governmental efforts to deny such liberty. John Dewey and his Humanistic followers have made it clear that they will not be satisfied until all American education is monopolized by those seeking to establish a secular society on a planetary scale. Mr. Kurtz, your organization should not be used as an instrument to eliminate the most precious of our freedoms.

The First Amendment bars the Federal Government from using the tax power or any other power to either establish a state religion or prevent the free exercise of religion. Your proposal violates the Constitutional barrier. Tax exemption is not Federal aid. It is not a benefit to be denied to religious groups not conforming to the Humanistic faith. It is part of the mechanism necessary to guarantee that the tax power cannot be used to inhibit the free exercise of religious liberty.

Mr. Kurtz, I respectfully request that you withdraw the Proposed Procedures and heed the cry of American citizens--"leave our liberty alone!"

Respectfully,

Robert L. Grete
Director

RLG:nb

Attachment 4

PRESORTED FIRST CLASS MAIL
U.S. DEPARTMENT OF LABOR
PERMIT NO. G-12

STATE OF FLORIDA
DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY
DIVISION OF UNEMPLOYMENT COMPENSATION
BUREAU OF TAX
TALLAHASSEE, FLORIDA 32301
[illegible]

NOTICE OF AMOUNT OWED

XXXXXXXXXXXXXXXXXXXXX
THE FOLLOWING AMOUNT HAS BEEN PREVIOUSLY BILLED
AND IS PAST DUE. PLEASE PAY IMMEDIATELY.

Q/YR	TAX DUE	INTEREST DUE	PENALTY DUE	SERVICE FEE	FILING FEE	TOTAL
2/80	810.03	186.31				996.34
2/81			15.00			15.00
2/81			10.00			10.00
3/81			15.00			15.00
3/81			10.00			10.00
4/81			15.00			15.00
4/81			10.00			10.00
1/82			15.00			15.00
1/82			10.00			10.00
2/82			10.00			10.00
3/82			15.00			15.00
4/82			5.00			5.00
1/83			10.00			10.00
~~2/83~~			~~5.00~~			~~5.00~~
IF PAYMENT ALREADY SENT OR PAYMENT ARRANGEMENT MADE, PLEASE DISREGARD THIS STATEMENT.			TOTAL IF PAID BY 07/31/84			1,141.34

DATE MAILED	ACCOUNT NO.
06/29/84	955364 1

ROCKY BAYOU CHRISTIAN SCHOOL
INC
2101 N PARTIN DR
NICEVILLE FL 32578

PLEASE RETURN WITH PAYMENT 1 OF 2

LES FORM UCT-27 (REV. 11/83)

Attachment 5

Rocky Bayou Christian School
5101 NORTH PARTIN DRIVE NICEVILLE, FL 32578
TELEPHONE 678-7716

5 December 1983

Senator Robert Dole
Chairman, Finance Committee
United States Senate
Washington, D.C. 20510

Dear Senator Dole:

I am so thankful that you have agreed to hold hearings on S 2099, which regards what I believe is one of the most serious threats to religious liberty in American history. The change in the Social Security Act, for the first time in American history, authorizes the federal government to directly tax religious ministries to include the church of Jesus Christ.

I have written to four attorneys specializing in First Amendment law. They all agree that the best way to avoid application of this unconstitutional tax upon religious ministries is for Congress to repeal it before it takes effect. Since Congress needs time to consider it, it is necessary to pass the Jepsen Amendment (S2099) or a slightly improved version as quickly as possible after it reconvenes. During the delay before implementation Congress needs to thoroughly examine the religious issue in taxation and repeal the tax on religious ministries. If this is not done I fear many of us will be in expensive litigation.

There is one deficiency that I see in the current language of the Jepsen Amendment. The final section says, "For purposes of this section a charitable or educational organization which is affiliated with a religious organization shall be considered to be a religious organization." I believe such language is included to insure that parochial schools are covered by the implementation delay. While such a purpose is clearly right, it ignores the fact that many Christian schools (approximately 30%) having the same religious ministry as schools organized under a local church or denomination are independently organized. Such schools are called Category III Schools. The danger of faulty legislative language is illustrated in the court cases involving application of the Federal Unemployment Tax Act (FUTA) to religious schools. When Secretary of Labor Ray Marshall unilaterally decided to include religious schools under the FUTA system, court cases sprang up all over America. In the St. Martin's case, the Supreme Court determined that the language of FUTA exempted schools operated by a church or convention or association of churches. The court went on to distinguish between church schools integrated into a church's structure and those separately incorporated. In footnote #12 it states, "The importance of this distinction...is heightened by the great diversity in church structure and organization among religious groups in this country. ...This diversity makes it impossible, as Congress perceived, to lay down a single rule to govern all church related organizations. Our holding today concerns only schools that have no legal identity separate from a church. To establish exemption from FUTA, a separately incorporated church school (or other organization) must satisfy the requirements of Section 3309(b)(1)(B)...we leave the issue of coverage under 3309(b)(1)(B) for the future." A serious consequence results from distinguishing between religious schools organized as part of a church and those that are not, even though they have the same religious mission. Following the St. Martin decision, the government continued to attempt to apply FUTA to separately incorporated or independent (Category III) religious schools. This meant that litigation on behalf of Category III Schools had to continue. In the Grace Brethren case, which went to the Supreme Court, the Supreme Court remanded the case on the grounds that the case should have proceeded to the Supreme Court through the state court system rather than the federal court system. Since the Salem Academy case had already been proceeding in Oregon through the state courts, the Grace Brethren case has been dropped and efforts have been concentrated in the Salem Academy case. For Rocky Bayou Christian School, an independent Christian school in Florida, state officials have gotten to the point where they wish to serve a tax lien on our property. This action is presently on a hold pending resolution of the Salem Academy case. All of this litigation and hassle would be unnecessary if the language of the law simply recognized that religious ministries, because of 1st Amendment protection, are immune from federal taxation. Since taxation is a means of control and destruction, I would ask that we not make the same error in any language concerning the Social Security Act. Focusing on this point alone, I would recommend that the last paragraph of the Jepsen Amendment be changed to read, "For the purposes of this section, educational ministries organized for religious purposes are religious organizations." Since this is quite a technical point, very few are sensitive to this issue. I know that Attorney William Ball does understand it and if further clarification of the problems introduced into law by language which is not sensitive to this issue is necessary, I recommend discussing it further with him.

I attach a 13 September letter from Attorney William Ball to Dr. Paul Kienel giving some of his views. I also attach a brief analysis made by the Christian Education and Research Foundation. Finally, I attach my own analysis of the biblical and constitutional reasons that religious ministries should not be asked to pay such a tax. By way of a summary, let me ask a few key questions.

In Matthew 28:18 Jesus says to His disciples, "All authority has been given unto me both in heaven and on earth." Our founding fathers understood that man's law must recognize the higher law of God and conform to it. Has Congress lost this concept?

If only a greater can tax a lesser, how can we allow civil government to tax the church of our Savior?

In the first century, Christians went to the lions before they would simply make the false confession that Caesar was lord over Christ. If Jesus is Lord, how dare today's Christians confess the lordship of the federal government?

If the power to tax is the power to control and destroy, how dare American freedom lovers sit back and do nothing when such taxes are applied to Christ's ministries?

If the U.S. Constitution commands that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, how dare Congress pass a law to directly tax religious establishments, and how dare Christians submit to such a violation of biblical and constitutional principles?

I note that even the great Persian emperor Cyrus carefully excluded religious teachers from taxation (Ezra 7:24). In the American heritage, until now, governmental hunger for added funds has not run roughshod over religious liberty. I urge the Congress to reconsider, and I thank you, Sir, for allowing us an opportunity to discuss the religious liberty aspect of the Social Security Act.

In Christ's service,

Robert L. Grete
Director

RLG:plm

Attachments
1. William Ball letter.
2. CERF Analysis.
3. RBCS Analysis.

cc: Attorney William Ball

LAW OFFICES
BALL & SKELLY
811 N SECOND STREET
P O BOX 1108
HARRISBURG, PENNSYLVANIA 17108

September 13, 1983

MEMORANDUM TO: Dr. Paul A. Kienel
Executive Director, ACSI

RE: Social Security Tax on Churches

Starting January 1, 1984, all churches and schools which are exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code will be required to pay FICA (Federal Insurance Contributions Act) taxes for each employee who is paid $100. or more in a calendar year.

This change was made by the Congress virtually without opposition. Some churches took a position supporting the amendment on the ground of its benefit to their employees. It was also argued that the new tax is necessary to keep the Social Security program in existence. Further, churches and schools in many states already pay sales and excise taxes.

The principle involved is plainly a tax on religion. Churches and religious schools are not afforded an option to pay, or not to pay, for an insurance program for their employees. The relatively small size of the tax is irrelevant (though to some the burden may be substantial). If religion may be taxed a little, why not greatly? The tax imposes obligations upon religious bodies in respect to the use and management of their own resources and with respect to the personnel of their ministries.

What should be done with respect to this change? It is our opinion that a test litigation would fail. Without spelling out detailed reasons, it is clear to us that the Supreme Court would not strike down the amended law. The only remedy we see is through the Congress. Corrective legislation should be prepared and introduced at a very early date.

William B. Ball

William B. Ball

WBB:dh

IN DEPTH

The New Social Security Law

As regular readers of *FOCUS ON FREEDOM* know, churches, Christian schools and other nonprofit organizations must begin paying Social Security taxes on their employees beginning January 1, 1984. In the past, enrollment under the program has been optional, not mandatory. Many pastors have voiced their opposition to the new law; some, in fact, have indicated they will not pay Social Security taxes on their employees. There is considerable reason for their opposition. Social Security (F.I.C.A.) payments *are* taxes. The employer, in this case churches and Christian schools, are responsible for *one-half* of the tax. The other half is deducted from the employees' salary.

The National Christian Action Coalition (NCAC), a Washington-based lobbying organization, has examined possible legislative remedies. In their August newsletter, they report that the only reasonable solution would be to repeal that section of the new law which applies to religious, nonprofit organizations. The normal route for such a repeal would be through the Senate Finance Committee (Bob Dole, R-KS, Chairman) and the House Ways and Means Committee (Dan Rostenkowski, D-IL, Chairman). "Unless there is a massive telephone and mail effort targeted at those Committees from 'mainstream' and independent churches, and Christian schools," cautions NCAC, "the Congress will not even move off first base. Look at it realistically: Nobody wants to reopen the Social Security 'can of worms.' "

NCAC does suggest, however, that there is an alternative if the committees fail to act. A repealer amendment could be attached to a finance bill on the floor of the Senate. To take advantage of this strategy, those seeking the repeal would need: (1) an appropriate "vehicle;" i.e., a finance bill that was "veto-proof;" (2) a Senator willing to introduce the amendment; and, (3) promises of votes from 51 Senators.

It is possible that the new law will be challenged in the courts. The Christian Law Association, based in Cleveland, Ohio, is currently examining that prospect. The way it would happen is this: On January 1, a church governing board could write a letter to Treasury Secretary Reagan politely informing him that they have no intention of paying F.I.C.A. taxes. Soon thereafter, the government would bring legal action against the church. What happens then is anybody's guess. Judging by how the Supreme Court ruled on the Bob Jones University case, the church could lose. However, there have been recent cases involving Christian organizations and the National Labor Relations Board which give some cause for optimism.

In conclusion, it should be noted that many churches and Christian schools *already* pay Social Security taxes for their employees. That is not really the issue. The issue is: Can such a tax be mandatorily levied against the church? Sometime in the next year we should know.

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BIBLICAL PRINCIPLES:

What are the biblical principles underlying the refusal of RBCS as a religious ministry to pay taxes in any form to civil government? We don't have space for an exhaustive teaching on this subject. Therefore, I will simply sketch the logic that underlies our position. After describing the biblical basis for our stand, I will then turn to our constitutional basis.

What's the big issue? The big issue is the Lordship of Jesus Christ. In Matthew 28:18-20 we read these words in the New American Standard Version (NASV):

> And Jesus came up and spoke to them, saying, "All authority has been given to Me in heaven and on earth. Go therefore and make disciples of all the nations, baptizing them in the name of the Father and the Son and the Holy Spirit, teaching them to observe all that I commanded you; and lo, I am with you always, even to the end of the age."

This passage tells us that Jesus has all authority both in heaven and on earth. Christians who believe the Word of God must, therefore, submit to the authority of Jesus Christ in every area of life. In considering the authorities that Christ has set up through His Word, we can determine that God has established various jurisdictions in His system of government. God commands each Christian to be responsible for self government. God requires each family to operate in accordance with the principles He lays down for family government. God gives commands to the local church and also gives commands laying down the basis for civil government. When Christ commands us to make disciples of all the nations, He is giving the followers of Christ the mission of cultivating more followers. When He says that we must teach them, "All that I commanded you," He is giving each Christian a responsibility to disciple others in accordance with the truth that Christ has laid down in His Word. When Jesus concludes, "I am with you always, even to the end of the age," He is emphasizing the fact that Jesus Christ is alive, is in authority and rules continually over His people.

Another passage relevant to this subject is Romans 13:1-8. That passage reads as follows:

> LET every person be in subjection to the governing authorities. For there is no authority except from God, and those which exist are established by God. Therefore he who resists authority has opposed the ordinance of God; and they who have opposed will receive condemnation upon themselves. For rulers are not a cause of fear for good behavior, but for evil. Do you want to have no fear of authority? Do what is good, and you will have praise from the same; for it is a minister of God to you for good. But if you do what is evil, be afraid; for it does not bear the sword for nothing; for it is a minister of God, an avenger who brings wrath upon the one who practices evil. Wherefore it is necessary to be in subjection, not only because of wrath, but also for conscience' sake. For because of this you also pay taxes, for rulers are servants of God, devoting themselves to this very thing. Render to all what is due them: tax to whom tax is due; custom to whom custom; fear to whom fear; honor to whom honor. Owe nothing to anyone except to love one another; for he who loves his neighbor has fulfilled the law. (NASV)

This passage joins others to lay down the basis for human government. The concept of government is not restricted to civil government, for we are cautioned to be in subjection to the governing authorities. And we are told all authorities are established by God. In the home this means parental authority. In a local church it would mean the authority of church officers, such as elders and deacons. In civil government it would refer to civil rulers whether kings, governors, or sheriffs. In all cases, authority rests upon God's authority. The basis for obedience is that authority is exercised under God's authority. God has established authority as a minister unto us for good.

Thus we have the principle that Christians are to obey human authority because such authority is a servant of God. Quite clearly, if a civil government operates in accordance with God's authority, there will never be a reason for us to disobey. We would obey not only because of wrath (that is, because of fear of punishment for getting caught), but also for conscience' sake. That means, we obey because it is right to do so.

Now what do we do if human authorities give conflicting commands? Suppose for example, a district court judge orders a person to carry out a certain act, but a court of appeals reverses the lower court's order. What is the citizen to do? The answer, of course, is to obey the higher authority.

What do we do if human authority gives a command contrary to the commands of God? This question was put to the Sanhedrin by the apostles Peter and John: "Whether it is right in the sight of God to give heed to you rather than to God, you be the judge." (Acts 4:19) The apostles were clearly stating that those in authority had the responsibility for discerning whether or not they were acting in accordance with the authority of God and if not, whether it was more important to obey God rather than man. The apostles supply a clear answer to their question in Acts 5:29 where they say, "We must obey God rather than men." The principle then is one of Lordship. When Jesus Christ commands His children, no authority can justly overrule.

Let's consider another passage. Jesus had God's sovereignty in mind when the Pharisees tried to trap Him on the issue of individual Jews paying tax to Caesar. Not only must we pay lawful taxes laid on by civil government,[1] but also we must render to God the things that are God's. We see that in the passage in Matthew 22:15-22.

> Then the Pharisees went and counseled together how they might trap Him in what He said. And they sent their disciples to Him, along with the Herodians, saying, "Teacher, we know that You are truthful and teach the way of God in truth, and defer to no one; for You are not partial to any. Tell us therefore, what do You think? Is it lawful to give a poll-tax to Caesar, or not?" But Jesus perceived their malice, and said, "Why are you testing Me, you hypocrites? Show Me the coin used for the poll-tax." And they brought Him a denarius. And He said to them, "Whose likeness and inscription is this?" They said to Him, "Caesar's." Then He said to them, "Then render to Caesar the things that are Caesar's; and to God the things that are God's." (NASV)

This raises the question, "What is our responsibility to God, and what is our responsibility to Caesar?" Certainly if Caesar were to claim that which is God's, we must obey God rather than men. While the coin might be made in Caesar's image, man was created in God's image. Statist Humanist doctrine claims that the state is sovereign over all, and grants liberty as it chooses to its subjects. God tells us that He has created man in His image. Man is to exercise dominion over the earth as God's vice-regent. Human government is organized by man to protect God-given liberty and maintain justice.

When the issue is the education of children we must then ask the question, "To whom does God give jurisdiction over the education of children?" A basis for the answer to this question is, "Who owns our children?" Some might answer, "The state owns the children." No biblical authority however, is found for such an idea. Others might respond that the parents own the children. Again, such an answer is not to be found in Scripture. Scripture makes it quite clear that the children are owned by God and given to parents in stewardship. Psalm 127:3 says, "Behold, children are a gift of the LORD; The fruit of the womb is a reward." If then parents are stewards over God's children, what responsibilities in particular do parents have? It is not my purpose to comprehensibly answer this question, but to focus on the one pertinent to this study. Parents are clearly made responsible for the education of their children. In Deuteronomy, Chapter 4, God calls attention to the fact that He has laid down statutes and judgments to be taught to His people. Verse 1 says, "AND now, O Israel, listen to the statutes and the judgments which I am teaching you to perform...." In verse 8 He says:

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[1] It is appropriate to point out the difference between a tax on individuals (those of Romans 13, the poll tax of Matthew 22, or the Temple tax of Matthew 17:24) and a tax on a ministry of Jesus Christ. Only a greater can tax a lesser. In America, the federal government cannot tax a state government and vice-versa because neither has jurisdiction over the other. Biblically, civil government has no jurisdiction over the ministries of Jesus Christ. This is recognized in the 1st Amendment discussed later.

> Or what great nation is there that has statutes and judgments as righteous as this whole law which I am setting before you today? Only give heed to yourself and keep your soul diligently, lest you forget the things which your eyes have seen, and lest they depart from your heart all the days of your life; but make them known to your sons and your grandsons. Remember the day you stood before the LORD your God at Horeb, when the LORD said to me, "Assemble the people to Me, that I may let them hear My words so they may learn to fear Me all the days they live on the earth, and that they may teach their children." (NASV)

Before moving to the next passage I would like to point out that the principle of these verses is that what God has taught us, we are obligated to teach our children, and a result of our teaching must be that our children learn to fear, or reverence, God all their days. Then in Deuteronomy, Chapter 6, Moses points out that God has commanded him to teach the people to obey God's law. In verse 2 he says, "so that you and your son and your grandson might fear the LORD your God, to keep all His statutes and His commandments, which I command you, all the days of your life, and that your days might be prolonged." This responsibility to teach our children extends 24 hours a day. That is seen in verse 7 where it is said, "and you shall teach them diligently to your sons and shall talk of them when you sit in your house and when you walk by the way and when you lie down and when you rise up. And you shall bind them as a sign on your hand and they shall be as frontals on your forehead." The symbology in the latter words indicates that the principles of God must be in the operation of our hand and in our mind. In Deuteronomy, Chapter 11, God again instructs His children in verse 18: "You shall therefore impress these words of mine on your heart and on your soul; and you shall bind them as a sign on your hand, and they shall be as frontals on your forehead. And you shall teach them to your sons, talking of them when you sit in your house and when you walk along the road and when you lie down and when you rise up." In Jeremiah 10:1-3 we read:

> HEAR the word which the LORD speaks to you, O house of Israel. Thus says the LORD, "Do not learn the way of the nations, And do not be terrified by the signs of the heavens Although the nations are terrified by them; For the customs of the peoples are delusion." (NASV)

The warning to God's people is that they should not learn the way of heathen nations who are governed by their mythology, astrology, and so. The delusions that lead the world are not to lead God's children.

In the New Testament in Ephesians 6:1-4 we read, "CHILDREN, obey your parents in the Lord, for this is right." Verse 4 reads, "And, fathers, do not provoke your children to anger; but bring them up in the discipline and instruction of the Lord." God's children are warned of their obligation in Colossians 2:8. "See to it that no one takes you captive through philosophy and empty deception, according to the tradition of men, according to the elementary principles of the world, rather than according to Christ." Paul also instructs us in 2 Corinthians 10:5 that Christians should be "destroying speculations and every lofty thing raised up against the knowledge of God, ... taking every thought captive to the obedience of Christ." These passages teach us that parents have the responsibility, if they are under the authority of God, to teach their children from the time they get up in the morning until the time they go to bed at night, to love God with all heart, mind and soul, and to develop a world view, a philosophy of life, a commitment of life under God's authority rather than in accordance with the philosophy of empty deception of the world, which is secularism, or according to the tradition of men, which is humanism. Christians are obligated to follow God's instructions concerning the education of their children.

This leads us to the next question, "What do we do if Caesar or civil government demands that we educate our children contrary to our faith, contrary to biblical principles, in accordance with the philosophy and empty deception of the world? Clearly if man gives us an instruction contrary to that of God, we must obey God rather than man. But also, we must draw the line at principle, not at the point of excessive violation of principle. The principle is that Christ is Lord or sovereign over His believers who cannot yield the responsibilities God has given them to the humanistic state. We must draw the line when the state steps out of its legitimate biblical bounds and asks that we accept its sovereignty rather than Christ's sovereignty over that which God has commanded us to do. The point at which the person is asked to go over his faith is a matter of individual conscience. Those Christians that do not see a challenge to their faith by the exercise of governmental control over the education of their children must make decisions in accordance with their conscience. Those of us who have seen God's clear commandment to us to raise our children in a way not generally done in the world, but in a way peculiar to those who adhere to His Word, must be willing to carry out God's instructions regardless of the cost. In fact, we must be willing to die for such convictions.

In the next section of this paper I will address in more precise terms why the levying of a tax is equivalent to an extension of government control over a religious ministry. If we grant, however, that both reason and history proves that taxation is in fact a means of control, then quite clearly, Christians cannot accept the imposition of a tax on a religious ministry. For Caesar to claim sovereignty over Christ is unacceptable to the Christian. We can see this issue in Christ's conduct before Caesar's representatives in John, Chapters 18 & 19. Assuming that the reader is familiar with those passages, let me simply point out a couple of key verses. In Chapter 19, verse 11, we find Christ's words to Pilate, "You would have no authority over Me, unless it had been given you from above; for this reason he who delivered Me up to you has the greater sin." Christ here is confirming God's sovereignty over all authorities and places a responsibility on Pilate for his exercise of authority. Those who delivered Him up, of course, are also political authorities. He points out to him that their sin was even greater. In verse 12 we read, "As a result of this Pilate made efforts to release Him, but the Jews cried out, saying, 'If you release this Man, you are no friend of Caesar; every one who makes himself out to be a king opposes Caesar.'" And then we find the accusers' declaration of their sovereign in verse 15. "They therefore cried out, 'Away with Him, away with Him, crucify Him!' Pilate said to them, 'Shall I crucify your King?' The chief priests answered, 'We have no king but Caesar.'"

What is the issue in Christ's crucifixion? The issue is, "Who is Lord?"

Why were believers sent to the lions in the first century? The issue is the same. They were unwilling to grant to Caesar sovereign authority over their religious exercise. They would not make a confession that Caesar is Lord. They insisted that Jesus is Lord. It would have been so easy for the principle of Roman religious toleration to grant them the liberty to worship Christ under the umbrella of Caesar's sovereignty. But they could not do that. They had to make a stand on the principle. And many were crucified or thrown to the lions for the stand they took. We should also take note of Paul's conflict with Jewish authority in Acts 19-27. Paul made his defense before Caesar's representatives and appealed to Caesar himself. He sought justice from Caesar for God has given to Caesar the responsibility to protect liberty and maintain justice. The definition of liberty and the criteria of justice of course must be God's. As Paul stood before civil authority asking for justice, so do we today.

CONSTITUTIONAL PRINCIPLES:

It is not the purpose of this section to exhaustively deal with all the constitutional considerations involved in this case. We could, for example, discuss equal protection of the laws and due process of law considerations from the 14th Amendment, as well as a number of First Amendment considerations. We could also deal with the Florida Constitution. The purpose here, however, is simply to trace the main thread of the First Amendment argument that works with our biblical stand to provide a sufficient case that taxation of the RBCS ministry is contrary to the supreme law of the land.

The First Amendment to the Constitution of the United States states, "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." This simple statement, composed of two clauses, is to prevent government from exercising control over religious affairs. If government exercises the tax power over religious ministries or activity, it operates on the principle that government may exercise control over religious ministries or activities. That this is true has been clearly established in history as well as in constitutional law. The court clearly sees the power to tax as the power to control and destroy.

Supreme Court Chief Justice John Marshall clearly recognized this principle in M'Culloch vs. Maryland, 4 Wheaton 316 (1819). In that case the State of Maryland attempted to tax an instrumentality (a national bank) of the federal government. The first question Marshall dealt with in that case was, "Does Congress have the power to incorporate a bank?" Using the implied powers doctrine, Chief Justice Marshall concluded that the federal government did indeed have the power to establish or incorporate a bank. He then proceeded to inquire: "Whether the State of Maryland may, without violating the constitution, tax that branch?" In his consideration of that question, we get principles relevant to the tax power of any civil government. In M'Culloch, the Court held that the constitution sustains the claim that the bank is exempt from the power of a state to tax its operations. Let me quote a couple of excerpts from Chief Justice Marshall's opinion. He first points to a "great principle" that "the constitution and the laws made in pursuance thereof are supreme," and deduces from that principle three corollaries. These are: First, "that a power to create implies a power to preserve." Applying this to our RBCS case, that corollary would indicate that if citizens of the United States under religious freedom principles were at liberty to create religious institutions, then they have the power to preserve those institutions. The second corollary is "that a power to destroy, if wielded by a different hand, is hostile to, and incompatible with these powers to create and to preserve." Applying that corollary to the RBCS case, obviously if a power to destroy a legitimate religious ministry were exercised it would be incompatible with the First Amendment. The third corollary is "that where this repugnancy exists, that authority which is supreme must control, not yield to that over which it is supreme." He then observes: "That the power of taxing it [the bank] by the states may be exercised so as to destroy it, is too obvious to be denied." Clearly, this observation applies to religious ministries as well as banks. Chief Justice Marshall is telling us that the power to tax is an obvious power that can be used to destroy. His view has been confirmed by court decisions to this day. For example, in Murdock vs. Pennsylvania, 319 US 105, the court held a state license tax levied on religious colporteurs unconstitutional and said, "The power to tax the exercise of a privilege is the power to control or suppress its enjoyment." Is religious instruction a matter for control by civil government? As expressed by Mr. Justice Jackson, a state "cannot make public business of religious worship or instruction, or of attendance at religious institutions of any character." Everson vs. Board of Education, 330 US 1, at 26.

In M'Culloch, Chief Justice Marshall considered one of the objections that could be used to blunt a challenge to denying the tax power on such grounds. He states, "Taxation, it is said, does not necessarily and unavoidably destroy. To carry it to the excess of destruction would be an abuse, to presume which, would banish that confidence which is essential to all government." Marshall's rejection of such argument is clear. He says, "But is this a case of confidence? Would the people of any one state trust those of another with a power to control the most insignificant operations of their state government? We know they would not." Applying this principle to our own case, we must admit that although a particular tax levied on a religious ministry may not in fact act to destroy that ministry is not argument to deny the tax power on the principle. A document quoted by Mr. Justice Douglas in his dissenting opinion, Waltz vs. Tax Commission, 397 US 664, at 721, reveals the attitude of our founding fathers on such issues. Some Virginians, objecting to a bill to tax the general public to support Christian teachers, said,

> It is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of [the] noblest characteristics of the late Revolution. The freemen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much, soon to forget it. Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever? (at 721)

Have we forgotten this lesson? Many who have learned very little of America's Christian heritage may not have learned this lesson at all. Statist-humanist education has attempted to replace the principles of religious liberty and limited government with the old Roman concepts of religious toleration and the omnipotent state. So far, however, the court has continued to favor religious freedom from state control. In Waltz vs. Tax Commission, for example, the court upheld the State of New York's exemption of religious ministries from the property tax. In the course of Chief Justice Burger's opinion of the Court, he states:

> The general principle deducible from the First Amendment and all that has been said by the Court is this: that we will not tolerate either governmentally established religion or governmental interference with religion. Short of those expressly proscribed governmental acts there is room for play in the joints productive of a benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference. (at 669)
>
> Governments have not always been tolerant of religious activity, and hostility toward religion has taken many shapes and forms - economic, political, and sometimes harshly oppressive. Grants of exemption historically reflect the concern of authors of constitutions and statutes as to the latent dangers inherent in the imposition of property taxes; exemption constitutes a reasonable and balanced attempt to guard against those dangers. (at 673)
>
> We must also be sure that the end result--the effect--is not an excessive government entanglement with religion. The test is inescapably one of degree. Either course, taxation of churches or exemption, occasions some degree of involvement with religion. Elimination of exemption would tend to expand the involvement of government by giving rise to tax valuation of church property, tax liens, tax foreclosures, and the direct confrontations and conflicts that follow in the train of those legal processes.
>
> Granting tax exemptions to churches necessarily operates to afford an indirect economic benefit and also gives to some, but yet a lesser, involvement than taxing them. (674-675)

Our constitutional argument can now be easily summarized. The American equivalent to Caesar is the Constitution of the United States. All laws must be consistent with that constitution. The constitution commands federal officials that they cannot constitutionally tax or otherwise exercise control over religious affairs. Notice that the First Amendment does not specify a church. In fact, if government were to restrict religious exercise to that performed by defined or approved churches, that would itself be a violation of the establishment clause. Should the government, for example, state that to truly enjoy free exercise in a Christian school, you must organize it in a certain approved way, government would be involved in establishing religion. Once the federal government says that only churches are legitimate institutions from which free exercise of religion may be made, they can define away any objectionable religious activity that doesn't meet the test of popular public policy. This is precisely what the establishment clause was written to prevent. Since the education of our children is a religious matter, carried out by a religious ministry, it is unlawful for civil government to entangle itself in the affairs of that ministry through the tax power or any other means. Therefore, in our particular case, both the Social Security Tax Act and the Federal Unemployment Tax Act, if drawn constitutionally, must exempt any legitimate religious ministry, to include conventionally organized churches and religious educational ministries such as our own.

RELIGIOUS LIBERTY

The Uneasy Case Against Reverend Moon

JOHN McCLAUGHRY

DESPITE THE protests of the Reagan Administration that it supports freedom of religion against government intrusion, the Internal Revenue Service is once again launching an assault on the independence of the nation's churches.

In the 1983 Bob Jones University and Goldsboro Christian Schools cases, the Supreme Court upheld the IRS position by decreeing that church-sponsored schools could not enjoy the benefits of tax exemption and deductibility if they practiced any form of racial discrimination. These cases dealt with schools, not with churches per se. Now, however, there is litigation under way designed to inject the government into the internal workings of bona-fide churches.

The case, brought by the Internal Revenue Service in 1981, is that of Reverend Sun Myung Moon, the Korean founder of the controversial Holy Spirit Association for the Unification of World Christianity, commonly known as the Unification Church, or the "Moonies." The IRS charged Reverend Moon with tax fraud. The District Court of New York convicted him, and he was sentenced to pay a $25,000 fine and serve 18 months in jail. A three-judge panel of the Second Circuit U.S. Court of Appeals recently affirmed the conviction on appeal, by a 2 to 1 vote. (Reverend Moon's lawyers have appealed for an en banc rehearing before the Second Circuit. If that is denied, they will seek review by the Supreme Court.)

It is unfortunate that the defendant in this case is such a controversial figure, for the public's feelings about the Moonies tend to override recognition of the key issue involved in the case. That key issue has nothing to do with Reverend Moon himself, or the theology of his church, or its fundraising and recruitment practices. It is, simply, the extent to which a bona-fide religious body can be penalized for refusing to adopt internal practices acceptable to the government. In addition, the circumstances surrounding the Moon prosecution strongly suggest a government vendetta against a church that politically powerful people find repugnant to their own brand of religion. Roger Williams, trudging south from Massachusetts Bay in 1635, would have understood.

Moon's Pilgrimage

Sun Myung Moon was born in 1920, in a rural part of what is now North Korea. His family converted to Presbyterianism when he was ten years old. When he was 16, he says, Jesus Christ appeared to him on Easter morning, telling him to go forth and complete Jesus's mission of reconciling humanity to God's word and His love. At the end of World War II, Moon, at age 26, founded what became the Unification Church.

He went to Pyongyang, then under Soviet occupation and now the capital of Communist North Korea. For his preaching the Communists had the usual respect. They threw him into a forced labor camp and tortured him to the point of death. American forces arrived at Hungnam in October 1950, and freed the young preacher from captivity. He made his way to Pusan, South Korea, six hundred miles away, pushing a bicycle carrying a comrade with a broken leg. From humble beginnings there the Unification Church took hold in Korea and Japan. By 1971 Reverend Moon, regarded by his followers as the embodiment of the faith and a new world prophet, was ready to go to America.

Now we come to the matter that led to Reverend Moon's prosecution. It is customary for new religions—and, indeed, many well established religions—to view their founders or clergymen as both spiritual and temporal trustees for the faithful. Adherents of the faith make their contributions to the leader of the church, who receives the assets in trust for the support and propagation of the faith.

In March 1972 Japanese church members contributed a substantial amount of money to Reverend Moon in support of the church's new missionary crusade to America. Reverend Moon deposited these funds in an account in his name in the Chase Manhattan Bank. His accountants duly reported funds withdrawn by him for personal living expenses as taxable income to him. But the interest earned on the money in the bank—totaling $106,500 over three years—was not reported as taxable income.

The crux of the matter is whether Reverend Moon accepted the contributions as trustee for the church and used them for traditional religious purposes. If so, the interest was not taxable. If not —*if* Reverend Moon simply pocketed the funds for his personal use—then the interest was indeed taxable, and Reverend Moon committed tax fraud in failing to report it.

Before examining this question further, it is worth noting the circumstances surrounding the prosecution of Reverend Moon, seven years after his failure to report the interest income. (In 1976 the Church incorporated in order to avoid further problems.)

There was in 1981 considerable public resentment against the Moonies. The National Council of Churches refused to accept the Unification Church's doctrines as compatible with traditional Christianity. There was widespread disapproval of the Church's fundraising methods, which included street solicitation. And there were frequent uproars over young people who had allegedly been seduced into Mooniehood by various brainwashing techniques.

In this atmosphere of public hostility the government brought its case for tax fraud. Reverend Moon, who had voluntarily returned from Korea to New York to stand trial, stated publicly his belief that the prosecution was motivated by racial and religious factors. His lawyers asked for a trial without a jury, fearing that no objective jury could be empaneled. Surprisingly, the government, which usually prefers court trials to jury trials, demanded a jury trial. Judge Goettel accepted the government's position.

At first the case seemed simple. It was clear that Reverend Moon had received the funds, put them into the bank, earned

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Mr. McClaughry was Senior Policy Advisor in the White House during the first year of the Reagan Administration. He has no connection with the Unification Church.

interest on them, and ignored the interest on his income-tax form. But Judge Goettel soon recognized that the real question was an intricate one, centering on the elusive nature of an implied trust relationship. At the same time, it became apparent that the jury was out of its depth. Even the judge himself observed, from the bench, that in the effort to secure a relatively unbiased jury it had been necessary to empanel jurors "who don't know much, because they are obviously the persons who start off with the least bias." These were, he said, "the less educated and less intelligent people." To this jury the judge then presented the complicated and subtle question of the implied trust relationship.

The technicalities of this question are better left to the law journals, but the basic issue was this: If the donors intended to give funds to the church for religious purposes, thereby implicitly creating a charitable trust, and if the funds were employed by the trustee (Reverend Moon) for such purposes, then Reverend Moon was not guilty of tax fraud in failing to report the interest on his personal tax return.

Anatomy of a Prosecution

Throughout its prosecution, the government insisted on the irrelevance of Reverend Moon's role as the founder of his church, terming him instead "an ordinary high-ranking businessman." When the defense sought to introduce evidence that Reverend Moon was merely a trustee for a religious body, the government objected. Even worse, government counsel openly intimidated the defense by promising to respond to a defense built around Reverend Moon's religious role by introducing "negative things about the church"—whether or not related to the financial arrangement in question. (The Christian Legal Society, representing the Christian evangelical movement, eventually filed an appellate brief arguing that this trial behavior by the government "unconstitutionally infringed on the defendant's free speech, [and] may also have a chilling effect on other individuals freely discussing and propagating their religions.")

The jury—improperly charged, according to the defense—found Reverend Moon guilty. His appeal was rejected, and at this writing his lawyers have asked for a rehearing before the entire appeals court to review what even the majority of the appeals panel termed the "troubling issues of religious persecution and abridgement of free speech" in the Moon case.

That those issues are troubling to many far beyond the Unification Church is a fact reflected by the remarkably broad coalition of religious organizations joining in a friend of the court brief on Reverend Moon's behalf: the National Council of Churches, the United Presbyterian Church, the American Baptist Churches, the AME Church, the Unitarian Universalist Association, and the National Black Catholic Clergy Caucus.

In the view of these mainline church organizations, "when someone's religious beliefs and practices become relevant to refuting the charges against him, treating him as though religion had nothing to do with the matter is the very essence of unfairness and discrimination. . . . Upholding the conviction in this case," the church groups continued, "would establish the dangerous principle that courts may simply disregard the religious reasons for, and the religious meanings of, someone's conduct.

"The principle that religious notions and explanations must at least be fully taken into account . . . is critical to followers of all faiths, not simply those faiths that are new or small or in disfavor," said the brief. "From the tax-exempt status of a church's parking lot, to the validity of an unincorporated church association's assertion of power to direct the actions of a church corporation, little of what even modern-day mainstream churches routinely do would survive intact if squeezed through a religion-extracting filter.

"Upholding the conviction in this case," the brief concluded, "would also establish the proposition that judges and juries may simply override a religion's own decisions about how to organize itself, how to allocate responsibility over church matters, and how to expend church resources. . . . The judgment in this case does not simply run roughshod over religion: It positively penalizes religious fervor and spiritual expression."

At the heart of the government's position seems to be the idea that there is nothing special about religion. If you wish to start a church, or contribute to a church, you must follow practices dictated by the government. Those who do not will be prosecuted vigorously, and the more unorthodox the religious beliefs involved, the more ammunition the government will bring to bear to sway a jury against your cause.

Furthermore—and here is the threat to all organized religions—the government is here assuming the power to penetrate into church affairs. Even a church as established as the Roman Catholic Church observes a doctrine whereby the bishop is the personal manager of church funds. Under the doctrine advanced by the government in its pursuit of Reverend Moon, all decisions of a bishop or other church official would be made under peril of prosecution, if the government was somehow displeased with the result.

Choice of Victims

One may concede that the government was clever in its choice of victims. Reverend Moon is not a popular figure in the American religious world. He is a non-white, a foreigner who speaks only halting English. His theology is highly unorthodox. In addition, he is outspokenly anti-Communist and sees himself as a rallying force for a great American struggle to roll back the Communist tide in the world. Then there are the allegations concerning the Moonies' fundraising and recruitment practices. If the government wanted to establish a new doctrine of government supervision of churches, it could hardly have chosen a better target to make its case.

But the case of Reverend Moon is not just his own problem. It should be a matter of grave concern for all those who defend freedom of religion against unwarranted government intrusion. For if Reverend Moon goes to jail—this time not in Communist North Korea, but in the United States of America, the great bastion of religious liberty—something of vital importance to all American religions goes with him.

At this stage, having won on appeal, the government's lawyers can be expected to resist any further review of the case in a higher court. But in view of the momentous issues involved—which the appeals court recognized even as its majority ruled against the defendant—the Reagan Administration should take the unusual step of supporting Reverend Moon's petition for review at the appeals-court level and, if that fails, his petition for review by the Supreme Court. Such recognition by the Administration that this is more than a simple case of white-collar crime would vastly increase the chances of a definitive consideration of the religious-liberty issue by the highest court in the land. □

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ERRATA

This is page 744 of S. Hrg. 98-1258 "Issues in Religious Liberty" which was inadvertently omitted.

SUPPLEMENTAL EXHIBIT NO. 5

AFFIDAVIT OF ROBERT E. HEGGESTAD

1. On August 31, 1984, I interviewed Ms. Michiko Kosaka. Ms. Kosaka stated that she was the translator who had been appointed by the Court to translate portions of a cassette tape of Mr. Takeru Kamiyama's testimony given before a Federal Grand Jury in the District Court for the Southern District of New York on July 9, 16, and 21, 1981. Ms. Kosaka stated that the tape was not complete and that she did not recall hearing either the oath or swearing in of Mr. Kamiyama on the tape. Mr. Kosaka stated that she spoke only with the judge, not with the U.S. Attorneys, and that she subsequently submitted the tape and the translation to the Court.

2. Mr. Kosaka stated that although she did not have an opinion on the original interpretation, she recalled that it was a clear case where the interpreter did not understand. She pointed cut that the translation of the tape which she had prepared revealed that the interpreter had not translated all of the words in all places and that in some cases, he "just tells the gist of the stories, -- just summarizes." She stated that when there were five or six parts to a question, the interpreter waited until the end and then translated in summary form.

3. I asked Ms. Kosaka what her background and education were in Japanese. Ms. Kosaka stated that she had spent half of her youth in Japan and the other half in other countries. She stated that although her formal education in Japan was very slight, she believed that she had a special ability in translating, particularly with respect to reading technical documents. Ms. Kosaka stated that she was presently working on a thesis in computational linguistics.

4. Ms. Kosaka stated that she had been in this country for approximately 10 years. Ms. Kosaka, however, did not describe any previous experiences during this period in which she had performed interpretive or translation services in a judicial proceeding.

5. Ms. Kosaka stated that she had prepared the "Kamiyama" translation very quickly. She explained that she had completed the translation in 2 weeks, although during that period she had not worked full time on the translation.

Robert E. Heggestad

February 25, 1985

Subscribed and sworn to before me this 25th day of February 1985.

My Commission expires:

My Commission Expires July 1, 1988

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